

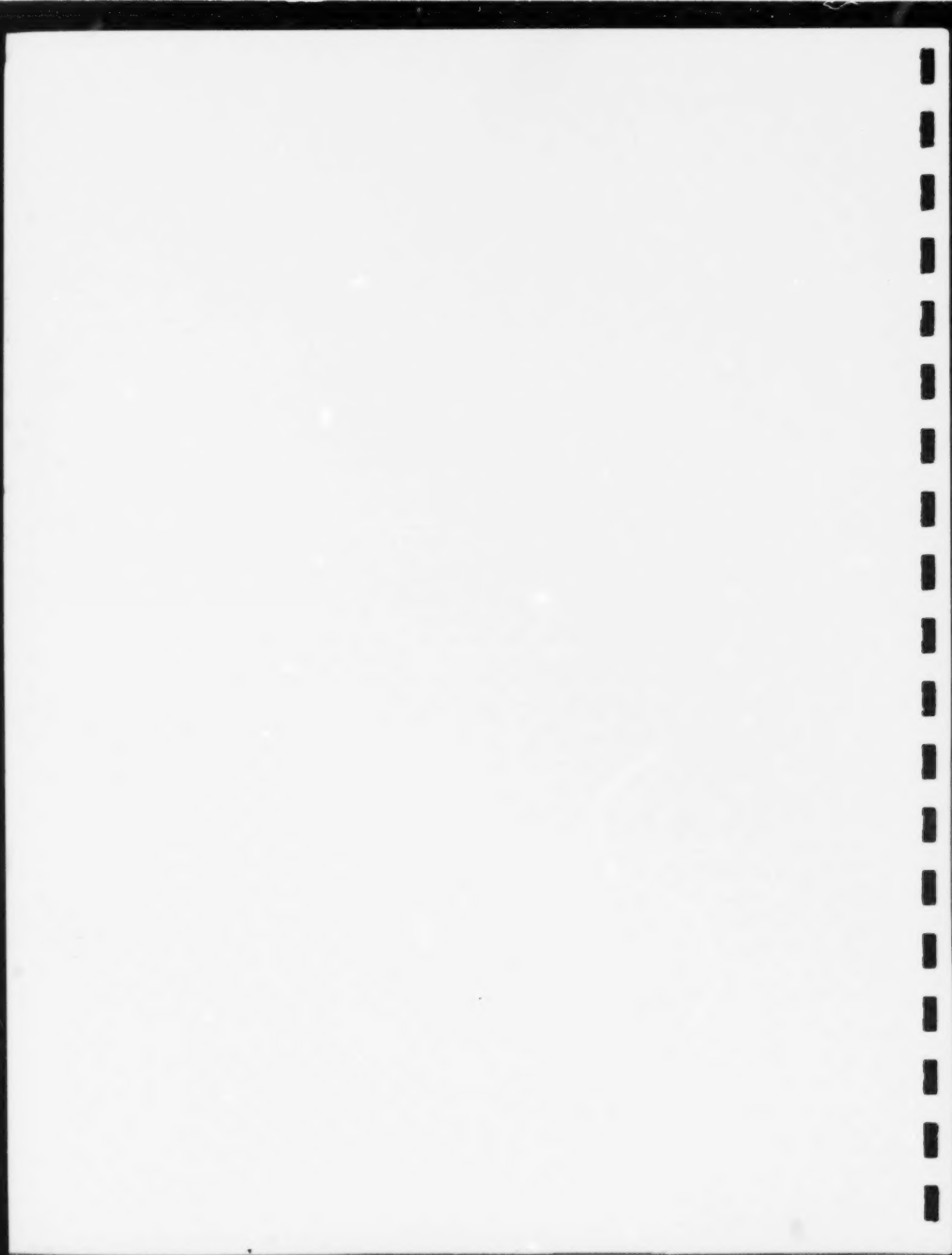
**Member Group Research Reports**

**CONSTITUTIONAL DEVELOPMENT STEERING COMMITTEE**

**Western Northwest Territories**

**August 1994**





# **Member Group Research Reports**

**CONSTITUTIONAL DEVELOPMENT STEERING COMMITTEE**

**Western Northwest Territories**

**August 1994**

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# THE WESTERN NORTHWEST TERRITORIES

The boundary of the Western NWT, showing the Inuvialuit, Gwich'in & Sahtu Settlement Regions (I.S.R., G.S.R., S.S.R.).

Portions of the Inuvialuit & Gwich'in Settlement Regions in the Yukon Territory are shown in dashed lines.

Unsettled boundaries for the Deh Cho, Dogrib & South Slave areas are not shown.



*In 1999 the Northwest Territories will divide and become two new territories, Nunavut in the East and a new western territory.*

*In November of 1992, the political leaders of the western NWT formed the Constitutional Development Steering Committee with a mandate to guide the development of a constitution and structure of government for the new territory.*

*The CDSC consists of leaders representing the aboriginal organizations, the tax-based municipalities and the two women's organizations, as well as the fourteen western Members of the Legislative Assembly of the Northwest Territories.*

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During 1993, the aboriginal organizations, tax-based municipalities and women's organizations were funded to undertake research on how self government can be accommodated in the new constitution and government structure.

This publication consists of the final research reports submitted by each member group. A document that explains the CDSC and the western constitutional development process has also been included. The 1987 "Iqaluit Agreement" and the 1992 Report of the Constitutional Development Commission -- the results of earlier constitutional development exercises -- have been reprinted within for reference.

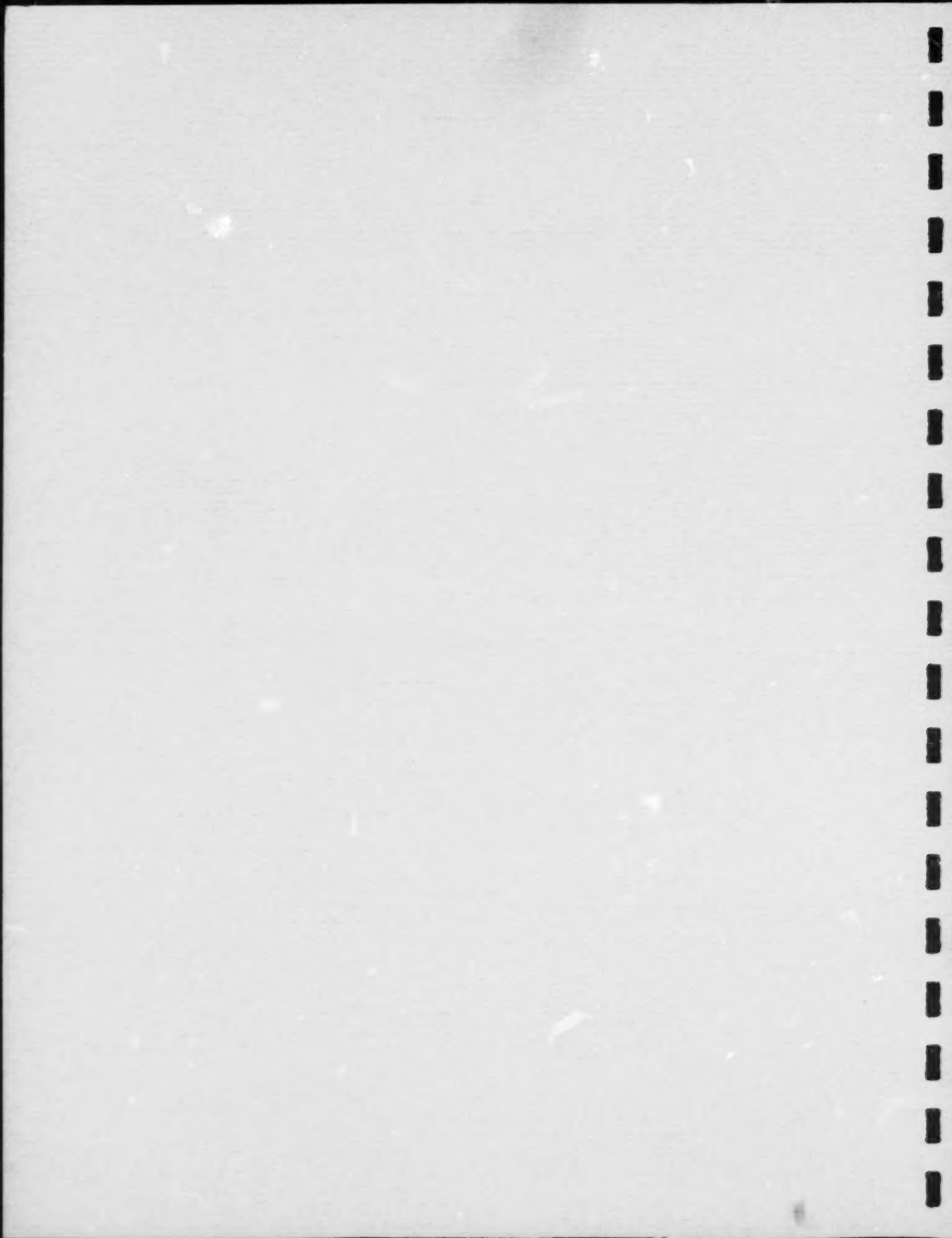
The research reports are the starting point in identifying the major themes and issues to be discussed at a first constitutional conference in November of 1994. The conference will bring together community representatives and political leaders from across the western NWT. In preparation, the CDSC and its member groups will summarize, analyze and compare the initial research in consultation with the selected conference participants and the public. The themes and issues arising from this preparation will allow the conference participants to provide general direction for the major elements of the future constitution. The CDSC and its member groups will consult the residents of the western NWT about the results of the first conference and convene a second constitutional conference in 1995. The second conference will provide specific direction and recommend a process for drafting and ratifying a new constitution and structure of government.



**THE WESTERN NWT CONSTITUTIONAL PROCESS**

**June 17, 1994**





## BACKGROUND

On April 1, 1999 the Northwest Territories will divide and become the Nunavut Territory and a western territory which has yet to be named.

The Nunavut Act, passed by Parliament June 10, 1993, serves as a constitution for the Nunavut Territory. The work of setting up a new eastern government will be done by the Government of Canada, the Government of the NWT and Nunavut Tunngavik. The three parties formed the Nunavut Implementation Commission (NIC) to make recommendations on how to set up the eastern government. NIC is funded by the Government of Canada until 1999.

Work on a constitution and new government for the western territory should also be finished by 1999, but will be done differently than in the East. The western territory includes a wide variety of community and regionally based cultural groups. It includes several Aboriginal land claims and future self government arrangements, as well as several large municipalities. The first task for people of the western territory is to build a consensus on a constitution and structure of government that can best represent the differing interests and aspirations of its residents. The work of setting up the new western government will come later.

Efforts to develop a proposal for a constitution and structure of government for the west began in the 1980's with the Western Constitutional Forum. More recently, an ad hoc Committee of Political Leaders comprised of five Aboriginal leaders and two MLAs came together in March 1991 to consider how constitutional development should proceed. It developed terms of reference for the Commission for Constitutional Development which were approved by the Legislative Assembly. The Government of the Northwest Territories funded the Bourque Commission, as it came to be known, and its report was presented to the public in April 1992.

In November 1992, the Committee of Political Leaders was expanded to include the elected leaders of the Aboriginal organizations, the fourteen western MLAs, three Mayors chosen by the Association of Tax-based Municipalities to help represent non-aboriginal residents, and an elected representative of the two women's organizations. The group was renamed the Constitutional Development Steering Committee, or CDSC.

## CONSTITUTIONAL DEVELOPMENT STEERING COMMITTEE

### CDSC Membership

The committee currently has 23 members who are elected leaders appointed by 8 member groups as follows:

|            |                                                                                    |
|------------|------------------------------------------------------------------------------------|
| 1 member   | Inuvialuit Regional Corporation                                                    |
| 1 member   | Gwich'in Tribal Council                                                            |
| 1 member   | Sahtu Tribal Council                                                               |
| 1 member   | Metis Nation-NWT                                                                   |
| 1 member   | Dogrib Treaty 11 Council                                                           |
| 1 member   | The Native Women's Association - NWT and the NWT Status of Women's Council jointly |
| 3 members  | The Association of Western Tax-based Municipalities                                |
| 14 members | The Western Caucus of the NWT Legislative Assembly                                 |

There are 10 eligible member groups, and a possible total CDSC membership of twenty five, including the Deh Cho and NWT Treaty 8 Tribal Councils. In February of 1994, the two councils withdrew from the Committee, but are eligible to rejoin at any time, and are provided information and materials as if they were members, because they are the political organizations which directly represent the Dene in their regions. The DCTC has indicated it may observe CDSC meetings and will review its participation during its annual assembly this Summer.

The leaders who currently represent the member groups on the CDSC are:

#### **Western Caucus**

*Nellie Cournoyea, Nunakput*  
*Fred Koe, Inuvik*  
*Richard Nerysoo, Mackenzie Delta*  
*Stephen Kakfwi, Sahtu*  
*Jim Antoine, Nahendeh*  
*Sam Gargan, Deh Cho*  
*John Pollard, Hay River*  
*Jeannie Marie-Jewell, Thebacha*  
*Don Morin, Tu Nehde*  
*Henry Zoe, North Slave*  
*Michael Ballantyne, YK North*  
*Tony Whitford, YK South*  
*Brian Lewis, YK Centre*  
*Charles Dent, YK Frame Lake*

#### **Aboriginal Organizations**

*President Willard Hagen, GTC*  
*Chairman Robert Kuptana, IRC*  
*President George Cleary, STC*  
*President Gary Bohnet, MN-NWT*  
*Grand Chief Joe Rabesca, DT11C*

#### **Association of Western Tax Based Munic.**

*Yellowknife Mayor Pat McMahon, AWTBM*  
*Norman Wells Mayor Kevin Diebold, AWTBM*  
*Hay River Mayor Norm Hill, AWTBM*

#### **Women's Organizations**

*President Bertha Allen, NWANWT*

The CDSC appoints from amongst its members a Chairman, a First Vice Chairman and a Second Vice Chairman. Each member may appoint a proxy to act in their absence. The proxy must hold an elected office in the same organization(s) that the member represents on the CDSC.

## Mandate and Principles of the CDSC

The mandate of the CDSC is to design, implement and guide the process of developing a constitution and structure of government for the western territory, including how substantive decisions on the constitution will be made and how a final proposal will be formally ratified. Substantive decisions on the character and content of the proposed new constitution will NOT be taken by this committee.

The CDSC approved the following on December 6, 1993:

### *Draft Principles to Guide the Western Constitutional Process*

1. The Constitutional Development Steering Committee (CDSC) is working towards establishing an innovative constitution and structure of government for a western territory.
2. The new government will represent and serve all residents of the western territory.
3. There will be community, central and regional government institutions.
4. The constitution of the western territory will be consistent with the Constitution of Canada, including the Charter of Rights and Freedoms.
5. The constitution of the western territory will recognize and affirm, and accommodate to the maximum extent possible, existing Aboriginal and Treaty rights, including modern Treaties and Aboriginal peoples' inherent right of self-government.
6. The new system of government will include Aboriginal government institutions as well as public government institutions.
7. The new government will recognize self-government agreements negotiated by Aboriginal peoples and Canada.
8. A division of powers will be developed with a view to allowing authority to be exercised by the level of government which is able to deliver a service most efficiently and effectively.
9. Based on public involvement, and direction and the support of Aboriginal governments and the Legislative Assembly, the CDSC will continue to guide the constitutional process to its conclusion.
10. The public will be involved through information distribution, community meetings, regional workshops and constitutional conferences, and residents of the western territory will have the opportunity to ratify a final constitutional package.
11. The CDSC is committed to having a new constitution and structure of government for the western territory in place for the division of the Northwest Territories planned for 1999.
12. The Federal government will enact legislation to implement the territorial constitution and Aboriginal self-government agreements and, therefore, it must be involved in the western constitutional process.

### CDSC Management Group

The CDSC Management Group oversees and directs the work required to implement the decisions reached by the full Committee. The following formula determines how the CDSCMG is appointed:

A total of twelve CDSC members will be appointed to the Management Group such that it is comprised of one MLA who is GNWT Minister of Intergovernmental and Aboriginal Affairs; four MLAs, two of whom shall represent majority non-aboriginal constituencies; the one member for the women's organizations; one of the three members for the Association of Western Tax-based Municipalities; and five of the aboriginal organization members; and such that the Chairman, First Vice Chairman and Second Vice Chairman of the CDSC hold the same positions within the Management Group.

The members currently appointed to the CDSCMG are: Koe, Kakfwi, McMahon, Lewis, Dent, Antoine, Allen, Bohnet, Kuptana, Hagen, Cleary, Rabesca

### CDSC Management Society and Secretariat

In order that the CDSC can receive funds, hire staff and enter into contracts, the Management Group is incorporated under the NWT Societies Act as the Constitutional Development Steering Committee Management Society. The affairs of the CDSC are managed by an Executive Director and staff --the Secretariat -- who report to the CDSC through the Chairman and Vice Chairmen.

### CDSC Sub Committees

Sub Committees are struck to examine specific matters and are the responsibility of the CDSCMG to coordinate. The Sub Committees struck to date are as follows:

Constitutional Conference: To draft principles to guide the CDSC process and to identify themes/issues and plans for the first constitutional conference. (Bohnet, Gargan, Hagen, Dent, Rabesca, Allen, Lewis)

Intergovernmental Relations: To consider divisions of powers and relations between community, regional and a central government. (Brooks, Ballantyne, Nerysoo, Cleary, Antoine, Kuptana)

Division of Assets, Liabilities and Finances: To consider this issue in consultation with the Legislative Assembly committee struck to deal with the matter. (Marie-Jewell, McMahon, Ballantyne, Whitford)

Boundaries and Elections: To consider the numbers of constituencies, boundaries, etc. for electing members to a western legislature. (Morin, Whitford, Diebold, Nerysoo)

CDSC workplans/budgets: To draft workplans and budgets for the CDSC process. (Marie-Jewell, Cleary, Lewis, Allen, Dent, Kuptana)

Treaties: To consider the relationship of Treaties to constitutional development. (Agreed to by the CDSC based on a NWTT8TC request but never implemented due to their withdrawal.)



## WORKPLAN

*The following updated workplan was adopted by the CDSC in December 1993 for:*

- *the development of a proposal for a constitution and structure of government for a western territory;*
- *the ratification of the proposal;*
- *planning for the implementation of the western government;*
- *the enactment of legislation establishing the western territory and government.*

### **1. Meetings of the CDSC, its Management Group and its sub-committees:**

The CDSC and its Management Group will each meet bi-monthly. Sub-committees established from time-to-time by the CDSC will meet as required. Travel and expenses for CDSC members or their alternates to attend official meetings of the CDSC and its sub-groups will be paid by the CDSC. No honorariums will be provided for members or their staff. The CDSC will not pay travel and expenses for member's staff to attend meetings unless those expenses are authorized in advance by the CDSC or its Management Group.

### **2. CDSC administration**

#### **2.1 Staffing**

A Secretariat reporting to and taking direction from the CDSC is being established. It will have a complement of staff including, at least, an Executive Director, Communications Director and Office Manager. The Executive Director will be hired as quickly as possible followed by competitions for the remaining positions.

#### **2.2 Office and administration**

Office space, furnishing and equipment will be secured as quickly as possible and financial systems and administrative policy put in place.

### **3. New Research**

In 1993, the Government of the Northwest Territories provided the CDSC with funds for contributions to nine groups to conduct research on means to implement self

government at the community and/or regional level in the context of establishing a constitution and government for a new western territory. This work is now complete. The nine groups who did the research are:

*Metis Nation - NWT  
NWT Treaty 8 Tribal Council  
Deh Cho Tribal Council  
Inuvialuit Regional Corporation  
Association of Western Tax-based Munic.*

*Women's Organizations  
Dogrib Treaty 11 Council  
Sahtu Tribal Council  
Gwich'in Tribal Council*

#### **4. Participation of the Federal Government**

The Federal Government has a central role to play in the Western Constitutional Process. While not a member of the CDSC, it is important that the federal government have an opportunity to offer its suggestions and express its views on a future government for the western NWT. Three of the avenues available for federal participation are:

- The Minister of DIAND is responsible for constitutional development in the North -- there are various ways to make his views known to Northerners;
- A DIAND official could attend CDSC meetings as an observer able to relay information from the federal government;
- It is proposed to establish a Western Liaison Committee comprised of federal & GNWT officials and officials from the CDSC Secretariat & member organizations to facilitate the sharing of policy and technical information useful to the constitutional process.

#### **5. Lead up to the First Constitutional Conference**

##### **5.1 Identify Themes/Issues for the Conference**

Discussions on constitutions and structures of government can become confusing, intimidating and unnecessarily complex. In order to facilitate discussions at the first conference, it is important that the themes or issues be clarified and categorized into manageable segments. The CDSC will agree on 7-9 issues as soon as possible so that all publications, public consultations, etc., from now to and including the first conference, focus on a consistent set of themes and questions.

## 5.2 Distribution of the Research Papers

The nine research projects and other relevant documents will be the primary sources for the first conference. All nine papers will be distributed to every delegate invited to the first conference. Copies will also be available to the public upon request. Not everyone will read these papers in their entirety, so additional materials will be required.

## 5.3 Preparation of Summaries/Comparisons of the Nine Papers

Using the 7-9 issues as a framework, summaries of the nine papers will be prepared. These summaries will be compiled into a document which will compare each group's position on the basis of the 7-9 issues. The paper could also include summaries of the Bourque Commission Report and the principles from the 1987 Iqaluit Agreement for the sake of comparison. The CDSC will approve this document before it is released.

## 5.4 Public Information

CDSC will publish the summary paper as a flyer in newspapers and otherwise make it available to the public. Audio tapes will be produced in the western NWT official languages, and written texts may be published in some/all of the official languages. Other information materials will be distributed as required.

## 5.5 Public Consultation

Using the summary paper and other materials, individual members of the CDSC will engage in public consultations with their constituents before the conference. The CDSC will also conduct a round of community consultations. CDSC and member group staff will conduct five regional workshops involving the delegates for the first conference.

## 6. Organizing the First Conference

### 6.1 Delegates

Delegates will be selected and notified of their invitations as early as possible. They will be involved in the CDSC process in a number of ways in advance of the actual conference.



## 6.2 Facilities, Travel, etc.

Commitments must be made months in advance of the conference. The work will be intermittent but ongoing.

## 6.3 Publicity

A communications strategy will be implemented well in advance of the conference.

## 7. Conducting the First Conference

### 7.1 Objectives of the Conference

- To make recommendations on principles and options for a constitution and structure of government for the western territory
- To make recommendations on how the remaining stages of the constitutional process should be completed

n.b. CDSC cannot afford to wait for a recommendation from the conference on how the constitutional process should continue before approaching the federal government for funding, and it cannot approach the federal government for funding without a plan. Therefore, the first conference, in reviewing this plan, may recommend changes and the federal government needs to be aware of this.

### 7.2 Status of the Delegates to the Conference

The conference will be empowered to make recommendations to the CDSC on matters related to the conference objectives.

### 7.3 Form of Recommendations

Recommendations should be made in the form of a resolution from the conference to the CDSC. Issues/resolutions should be discussed to the point where there is fairly general support. It would not be desirable to have resolutions passed by slim majorities. Some issues may have to await a second conference or other appropriate opportunity for resolution.

#### **7.4 Date of the First Conference**

The CDSC has established a sub-committee to plan the conference for November of 1994. The sub-committee will prepare a detailed plan for review by the CDSC.

#### **8. Lead up to the Second Constitutional Conference**

##### **8.1 Identify Themes/Issues for the Conference**

The second conference will be seeking more detailed advice and direction than the first, but the need to identify themes and issues for the conference remains the same.

##### **8.2 Public Information**

A public information/education strategy will be required between the two conferences.

##### **8.3 Inter-party Discussions/Negotiations**

In light of the recommendations of the first constitutional conference, discussions and negotiations will occur within and between parties to strengthen commonalities in position and to explore options to resolve differences. This will help set the stage for the second and last constitutional conference.

##### **8.4 Public Consultation**

The CDSC will conduct another round of community consultation. CDSC staff will conduct five regional workshops involving the delegates from each region selected to attend the first conference.

#### **9. Organizing the Conference**

##### **9.1 Delegates**

Where possible, the same participants will be invited to the second conference as the first.

## 9.2 Facilities, Travel, etc.

Once again, commitments must be made months in advance of the conference. The work will be intermittent but ongoing.

## 9.3 Publicity

A communications strategy will be implemented well in advance of the conference.

## 10. Conducting the Second Conference

### 10.1 Objectives of the Conference

The anticipated outcomes are firmer and more detailed recommendations on the specifics of a constitution and structure of government for the west, and a recommendation on what body should be delegated responsibility to draft the final package which would be submitted to the public for ratification.

### 10.2 Date of the Second Conference

It is anticipated that the second conference will be held in the Spring of 1995.

## 11. Drafting the Final Constitutional Proposal

### 11.1 The Body to draft the final proposal

Public comfort and credibility are essential forerunners for a successful plebiscite to ratify a constitutional proposal. Selecting the appropriate body to draft the final proposal will be an important recommendation from the second constitutional conference. Four possible types of bodies to be established by the enabling legislation are presented for illustration:

#### *Elected Constituent Assembly*

A special election might be held to elect individuals to a body for a two month period for the sole purpose of drafting a proposed constitution and structure of government for the west. It might be a group of fourteen, elected using the existing territorial constituencies in the west. The directions they receive in the enabling legislation would be detailed and specific as provided by the constitutional conferences and CDSC. A majority vote of 2/3 (10 of 14) might be required on each decision, etc.

### *Appointment of Political Leaders*

Similar enabling legislation would be passed but, instead of holding an election, a reasonably sized and representative group of politicians would be appointed to draft the final proposal.

### *Constitutional Commission*

A group of non-political, respected, and representative citizens similar in make up to the Bourque Commission would be appointed through legislation to fulfil the same function.

### *Technical Experts*

The work may be so close to completion that only technical skills are required.

## 11.2 Enabling Territorial Legislation

Based upon the recommendations of the second conference and the advice of CDSC, the Legislative Assembly would enact legislation to establish the body responsible for drafting the final proposal, and possibly set dates for a ratification plebiscite. The enabling legislation would be very specific on membership on the body, its terms of reference, its method of decision-making, and its deadline. If the second constitutional conference has been successful, this should be more of a technical than a political exercise.

## 12. Plebiscite

### 12.1 Public information

A factual, neutral information program will be necessary.

### 12.2 Managing the Plebiscite

The Clerk of the Legislative Assembly has the experience and capacity to manage the plebiscite. Funding will be required.

### 12.3 Campaign

It is anticipated that CDSC members will actively campaign.

### 12.4 The vote

Residents of the western NWT express their will.

**13. Western Implementation Commission**

**13.1 Terms of Reference**

Negotiate terms of reference for a western implementation commission with the federal and territorial governments.

**13.2 Start up**

Select members, hire staff, establish offices, etc.

**13.3 Prepare Implementation Plan**

Prepare and recommend a plan to implement the system of government for the western territory.

**14. Federal and Territorial Legislation drafted and enacted**

CONSTITUTIONAL DEVELOPMENT STEERING COMMITTEE

--- PRESS RELEASE ---

June 20, 1994

**First Western NWT Constitutional Conference set for November 29 - Decemeber 2**

Up to one hundred and fifty delegates from all thirty four Western NWT communities will gather this Fall to discuss how a western territory will be governed after division of the NWT.

The First Western NWT Constitutional Conference -- the initial major event in a public process to shape a new western territorial government -- will begin on November 29 in Yellowknife. The conference was called by the Constitutional Development Steering Committee (CDSC), which met on Friday to review western constitutional development plans based on a recent government funding commitment.

Formed in late 1992 by political leaders of the Western NWT, the CDSC was mandated to guide a constitutional development process for the new western territory. The leaders of the Aboriginal organizations, representatives of the tax-based municipalities and the women's organizations, along with the fourteen Western Members of the Legislative Assembly, make up the CDSC. For the last year, the group has been working to put in place a full-scale, public, constitutional process. The only missing element has been money to do the job.

A funding proposal was submitted to the federal government in December of 1993, and CDSC representatives lobbied for support and funding. On March 18, federal DIAND Minister Ron Irwin informed the CDSC he would support the process and negotiations began on the amount of funding. Earlier this month, the federal and territorial governments agreed to fund the CDSC \$1,000,000 and \$500,000 respectively for completion of the first of two proposed constitutional conferences.

The First Conference will occur over four days of plenary sessions and workshops. The conference delegates will be expected to provide general direction on the major elements of a constitution and government structure. The second conference in 1995 will recommend specific details and a process to draft a constitutional proposal. A final proposal will be ratified by residents of the Western NWT.

During 1993, the Aboriginal organizations, the tax-based municipalities and the women's organizations were funded by the GNWT, on behalf of the CDSC, to do research on how self government can be accommodated with public government in the new western territory. The research reports are the starting point to identify the major themes and issues for the First Conference.



The reports are being published for public distribution in July. In preparation for the conference, the CDSC and its member organizations will summarize, analyze and compare the research and share this work with the conference delegates and public. The themes and issues arising from this information will guide the first conference in its deliberations.

During its meeting Friday, the CDSC formally appointed a Chairman and two Vice Chairmen who will oversee the activities of the CDSC and its administrative matters. Fred Koe, MLA for Inuvik, has been appointed Chairman; Pat McMahon, Mayor of Yellowknife, and Gary Bohnet, President of the Metis Nation-NWT, will serve as First and Second Vice Chairmen respectively.

The CDSC also approved a budget for the full \$1.5 million in funding. The major expenditures are funding of the member organizations and the CDSC to consult the public, costs of the first conference, and costs of CDSC meetings and administrative operations.

Beginning July 15, 1994 the CDSC can be contacted at the following telephone number and address:

*Constitutional Development Steering Committee Secretariat  
P.O. Box 2940  
Yellowknife, NWT  
X1A 2R2*

*telephone: 403-873-4440*

*For more immediate information telephone Chairman Fred Koe at 669-2268 or Executive Director Steve Iveson at 873-7108.*

*DRAFT*

WESTERN ARCTIC REGIONAL GOVERNMENT

INUVIALUIT AND GWICH'IN PROPOSAL FOR  
RESHAPING GOVERNMENT IN THE  
WESTERN ARCTIC

November 1993



*DRAFT*

WESTERN ARCTIC REGIONAL GOVERNMENT

INUVIALUIT AND GWICH'IN PROPOSAL FOR  
RESHAPING GOVERNMENT IN THE  
WESTERN ARCTIC

November 1993

## Forward

These Proposals for Reshaping Government In The Western Arctic and the creation of a Western Arctic Regional Government arise from discussions over many years by people within the communities of the Western Arctic. The Proposals are to be discussed at a Western Arctic Regional Leaders Conference in Inuvik, November 19 - 21, 1993. The delegates at this conference include Inuvialuit and Gwich'in leaders together with elected representatives of all the municipal governments in the region.

It is hoped that the concepts and principles set forth in the Proposals will be endorsed by those at the conference. This support would be given with a view to proceeding expeditiously toward further discussions and negotiations to develop the concepts in greater detail. On-going discussions and negotiations will be on the basis of being without prejudice to all communities until formal approval is given to the completed final Proposals through appropriate procedures.

## 1. PREAMBLE:

The Gwich'in, the Inuvialuit, and long term non aboriginal residents of the Western Arctic share fundamental values, the region's resources, and a common historical background. We wish to enjoy economic opportunity, to protect our environment and wildlife, to enhance our languages and culture, and build healthy prosperous communities. Government structures and institutions therefore are of great importance.

The Inuvialuit and the Gwich'in are among the few aboriginal peoples in Canada to have successfully negotiated comprehensive land claim agreements. These agreements will provide the region with long term economic opportunities, and are contributing to an environment of co-operation and respect that will enable all residents of the region to participate in its future.

The Northwest Territories is changing rapidly. The North we know today will be a very different place after the creation of Nunavut in six years. Not only will a new Territory emerge in the East, there will also be a new territory in the West. The Territorial government will change substantially and evolve into a new government. Northern government and political leaders are attempting to map out the future of that government now.

These are times of change in the Northwest Territories. Decisions made today will affect us for generations. For residents of the Western Arctic there are two parallel processes currently underway. These processes will determine how we define ourselves; how we relate to one another and other residents of the Northwest Territories; and how government programs and services are delivered in the region.

One of these processes involves constitutional development in the western Northwest Territories and the creation of Nunavut. The other involves redefining the relationship of aboriginal peoples to all levels of government. The two processes are concurrent. Division is a certainty and will result in a restructuring of the Territorial Government while land claim agreements provide a commitment, and framework for negotiating self government agreements.

The Legislative Assembly of the Northwest Territories has established a Constitutional Development Steering Committee (CDSC). The CDSC has the responsibility to develop a process for creating a constitution for the new Western Territory. The Committee includes aboriginal leaders, western MLA's, representatives of tax based municipalities, and a representative from the Native Womens' Association and the NWT Council on the Status of Women. The Inuvialuit Regional Corporation and the Gwich'in Tribal Council are members of the CDSC.



The Gwich'in Comprehensive Land Claim Agreement and the Inuvialuit Final Agreement entitle both groups to negotiate self government agreements. The Gwich'in have established a self government negotiating table; the Inuvialuit have tabled a Self Government Proposal with the Government of Canada in March 1993.

The Gwich'in Tribal Council (GTC) and the Inuvialuit Regional Corporation (IRC) believe their respective land claim agreements coupled with constitutional change in the Northwest Territories present a unique opportunity. Shortly after the Legislative Assembly established the Constitutional Development Steering Committee the two organizations created a Joint Committee to review and develop models of self government. The Committee is mandated to examine how the Inuvialuit, the Gwich'in, and other residents might participate as partners in restructuring government institutions in the Western Arctic. Both groups view this as a very important initiative.

This discussion paper summarizes the Joint Committee's conclusions. It has been prepared for the purpose of exploring ways in which the interests of Inuvialuit, Gwich'in and non aboriginal peoples of the Western Arctic can best be met in designing and implementing institutions of government in the region for the future. The Committee's deliberations have included consideration of restructuring public government as well as various options for aboriginal self government. The Joint Committee's most important conclusion concerns the incorporation of a new regional public government in the Beaufort Delta region. Committee members believe the development of a regional government will best represent the interest of all it's residents. The regional government will also result in greater local authority and more effective government programs.

A central objective is to have a government that achieves both equity and efficiency. Equity means fairness for all people. It means that democratic principles must be reflected in the institutions of government. Equity also means that the special rights of aboriginal peoples, as provided in land claim agreements and by treaty, including the inherent right of self government, are recognized and protected. Finally equity means that the institutions of government draw people together in a local and regional community so their common values and aspirations are fostered and realized.

The discussion that follows provides a rationale for this conclusion. This position paper also describes a model for regional government; the relationship between public and aboriginal government; the relationship that could exist between the regional government and a new government in the West; and other related constitutional development issues. While the focus of this paper is regional public government, and constitutional development in the West, the IRC and GTC wish to make it understood both groups reserve the right to negotiate aboriginal self government arrangements either concurrently or at some future date.

Regional public government and new self government arrangements need not be exclusive of one another. This position paper will provide a co-ordinated Inuvialuit and Gwich'in approach to self government negotiations and constitutional development in the Northwest Territories. This document is tabled jointly by the Inuvialuit Regional Corporation and the Gwich'in Tribal Council.

## **2. INUVIALUIT AND GWICH'IN POSITIONS:**

The Gwich'in and the Inuvialuit approaches to self government are similar in many respects. The Inuvialuit hold the view that self government can be expressed as public government. This has always been an Inuit preference as expressed in the original Nunavut proposal in 1976 and in the Nunavut Final Agreement of 1992.

The Gwich'in Self Government Framework Agreement provides that "self government may comprise Gwich'in involvement in public government pursuant to self government agreements." Chapter Five of the Gwich'in Comprehensive Agreement provides that negotiated self government agreements will "describe the nature, character, and extent of self government, the relationship between government and Gwich'in institutions and accommodate Gwich'in self government within the framework of public government." The Gwich'in Comprehensive Agreement clearly enunciates an interest in an ethnic form of aboriginal self government.

The completion of self government agreements with the Gwich'in would result in the restructuring of public government in the Western Arctic. In section 4(3) of the Inuvialuit Final Agreement Canada agreed that the Inuvialuit shall be treated no less favourably than other aboriginal peoples when restructuring public government institutions in the Western Arctic.

While the Gwich'in Comprehensive Agreement does focus upon an interest in community self government, the Inuvialuit and Gwich'in positions are consistent and have the same end goals. The two views are not in conflict. Both the Inuvialuit and the Gwich'in wish to achieve forms of government that are equitable, efficient, and responsive to the needs and interests of people at the community and regional level.

The areas of interest, or matters set out for negotiation, in the Inuvialuit Self Government Proposal and the Gwich'in Agreement are similar in many respects. The Gwich'in and the Inuvialuit recognize the many advantages of integrating structures of government in the Western Arctic. Both believe a regional public government that includes non aboriginal residents is the ideal approach for all people of the Western Arctic.

### 3. PUBLIC GOVERNMENT OR ETHNIC SELF GOVERNMENT:

Whether the focus of joint Inuvialuit and Gwich'in self government efforts should be directed at restructuring public government, ethnic self government, or a combination of both has been the subject of much discussion among Committee members.

Reshaping government involves developing new measures to deliver government programs and services, enact laws and set standards. These are complex issues that require careful thought.

The Inuvialuit and Gwich'in as claimant groups can independently pursue ethnic self government or work together to change government structures. They can also negotiate to create new forms of public government. The Committee has concluded that a clear distinction must be made between public government and ethnic based self government initiatives.

One reason the Committee chose to focus on public government relates to jurisdiction. In the regional model proposed later in this paper, it is suggested that a new Western Arctic Regional Government assume responsibility for crown (public) lands and the authority to levy real property taxes over those lands. It is unlikely that authorities of this nature could be negotiated if the scope of the proposed government was limited in some respects. The introduction of ethnic components to a public government model would limit the authorities of that government.

The primary objective of the Joint Committee is to maximize overall legislative authority in the region and ensure the delivery of superior government programs and services. The Committee believes that a new regional public government can achieve this goal, and that public government can most effectively deliver public programs and services for all residents.

Another reason not to confuse ethnic self government with public government lies in the character and composition of the residents of the Western Arctic. A public government that included special powers or authority for aboriginal groups might not be accepted by non-aboriginal residents. Similarly, Canada through the NWT Act, and subsequently our Legislative Assembly has established a tradition of public government at both the Territorial and municipal level.

As a result municipalities will also have an interest in Inuvialuit and Gwich'in restructuring initiatives. The Joint Committee accepts that a proposal to restructure government within the boundaries of the two settlement regions will require the support of the Inuvialuit, the Gwich'in, and municipal governments.

#### **4. ABORIGINAL SELF GOVERNMENT OPTIONS:**

The Joint Committee's recommendations concerning public government should not be interpreted as a recommendation or decision by the Inuvialuit and Gwich'in leadership that they will not negotiate ethnic self government arrangements.

There are jurisdictions over which aboriginal people feel they should have law making authority. Jurisdiction in matters of language, culture, child welfare, and custom adoption are examples. There is no reason why the Gwich'in or the Inuvialuit could not pursue specific negotiations in respect of these matters while also negotiating to restructure public government.

The two processes are not exclusive of each other. Public governments provide services to all residents and a new regional government may administer child welfare for example, but that will not limit the two aboriginal groups from pursuing authority over such an important matter if they choose to do so. It must be remembered that the two land claim agreements are constitutionally protected and will supercede any legislation establishing a new regional government. Similarly, and more importantly, the Gwich'in and the Inuvialuit maintain the inherent right to self government. The Joint Committee fully expects that while the regional focus will be on public government, there may be self government initiatives taken by either group at the community or regional level.

One challenge in developing a model for regional public government has been to find mechanisms that will ensure the new institution is accountable to the people who live in the Western Arctic and to those who will continue to live here in the future. There are possibilities in the structure and operation of the new government to accomplish this and some suggestions are made in the model that follows.

#### **5. A COMMUNITY DRIVEN APPROACH TO REGIONAL GOVERNMENT:**

The Inuvialuit Regional Corporation has developed several models for Inuvialuit self government. The most recent and comprehensive was completed in March 1993 and recognizes that local communities are paramount. Although the Gwich'in have not developed a specific model they have also adopted a very community oriented focus. This approach contemplates the development of local governments in Gwich'in communities first followed by a consideration of regional needs in the Gwich'in Settlement Region.

The Joint Committee accepts that concern for self, family and community will often take precedent over concern for region or Territory. The Government of the Northwest Territories has recognized this fact and has translated it into the Community Transfer Initiative. The Committee believes a new regional



government for the Western Arctic should be a partnership of communities with each holding an equal share.

The purpose of regional government is to gain efficiencies and effectiveness in the creation of regional standards, efficiencies in the delivery of programs, and to secure for the residents of the region greater control over public lands and resources including the offshore.

A regional government would also draw strength and identity from member communities. Certainly a regional focus offers greater opportunity for cost effectiveness, efficiency and practicality in the delivery of some programs and services. In a climate of diminishing resources the Committee believes the maintenance and enhancement of these values are fundamental to the evolution of community, regional and Territorial governments in the North.

There are other tangible benefits to regional government as well. The taxation and revenue generation ability of a regional authority will generally exceed that of a community government. A regional government's potential tax base will enhance its ability to raise revenues and to deliver superior programs. A regional government would ensure the people of the Western Arctic would be the first to benefit from the region's vast resources.

Ideally public government in the Western Arctic can be a blend of effective regional and community government. The challenge lies in integrating the strengths of each approach into a single model.

The IRC/GTC Joint Committee believes this can be accomplished through a model of regional government that is community controlled, and one that allows for the benefits of a regional tax base, wide ranging authority (enacting laws and setting standards) and the economies inherent to a regional approach. The Committee believes that as a rule communities should assume responsibility for program delivery.

While there are political and economic benefits of regional government there are also practical advantages. The Northwest Territories is a collection of regions with geographic, cultural, and historic boundaries. The present NWT is comprised of the MacKenzie, Keewatin, and Baffin districts. In recent years the NWT has become even more regionalized. The administration of the GNWT is based on regions, and regional land claims have further defined these regional boundaries. In many ways we have already established "regional governments".

If we are to restructure public government in the NWT we must formerly recognize the existence of regions and the effectiveness of a regional approach.

## 6. A MODEL FOR REGIONAL GOVERNMENT:

The Committee proposes a model of regional government with wide ranging authority. It would hold many powers currently held by either the Government of the Northwest Territories or the Government of Canada. These powers would not be delegated, but rather devolved in legislation. Some authorities, or law making abilities, would be paramount to those currently enjoyed by the Government of the Northwest Territories.

### 6.1. LEGISLATIVE AUTHORITY:

It is emphasized that any particular legislative power of the regional government would take affect only when, and as the regional assembly (made up of elected community councilors) so decides to exercise the given legislative power. Any law making authority to be exercised by the regional government would have to be conferred by the communities through their elected representatives to the regional assembly. The proposed regional government will have no legislative powers unless, and until, the communities through their representatives in the regional assembly wish to confer a given power to the regional government.

The regional government would have law making authority for regional programs and services, and the ability to set region wide standards for those programs and services. Communities would have authority over matters of local concern and follow standards set by the regional government.

### 6.2. BOUNDARIES:

The boundaries of the regional government would include the Gwich'in and Inuvialuit Settlement Regions.

The communities within the two settlement regions include Sachs Harbour, Holman, Paulatuk, Tuktoyaktuk, Aklavik, Inuvik, Ft. McPherson, and Arctic Red River.

### 6.3. REGIONAL COUNCIL:

A Regional Council would govern a Western Arctic Regional Government. Each member community would elect a Regional Councilor. A Regional Councilor could also hold office in his/her own community as a Mayor, Chief, or Community Corporation President. Regional Council elections could be held at the same time as other community elections. A Mayor and two other Regional Councilors would be elected in a region wide general election for a total of eleven (11) councilors.

#### 6.4. ACCOUNTABILITY OF REGIONAL COUNCILORS:

The accountability of regional councilors to their constituents would be similar to that accountability presently in place for elected Members of the Northwest Territories Legislative Assembly (MLA's) and elected Members of Parliament (MP's). Within the Beaufort and Delta regions there has been a high degree of satisfaction with the accountability of the elected members of these bodies and it is expected that the same degree of accountability will be provided by the democratically elected Regional Councilors.

#### 6.5. OPTING IN/OUT PROVISIONS:

All communities opting in to the regional government would do so by a majority vote of community residents. Once a community joins the regional government it would remain as part of the regional government although there will be options for each community to take on and deliver various programs and services.

In establishing a Western Arctic Region we are creating a geographic and governmental jurisdiction in a process comparable to the creation of other provincial, territorial and municipal jurisdictions within Canada. The procedures for withdrawing from this jurisdiction would be similar to the procedures for withdrawal from other jurisdictions established by Canada.

#### 6.6. MEETINGS OF THE REGIONAL COUNCIL:

Public meetings of the regional council would be held at least every three months. Additional meetings could be convened as required. Such meetings could be held by teleconference if necessary. The Mayor would chair meetings of the Council and act as Chief Executive Officer of the Western Arctic Regional Government. The Mayor and Regional Councilors would normally serve a term of three years. A three person executive committee of the Council would also be established.

#### 6.7. ADMINISTRATION:

The regional council could establish administration departments or divisions. These departments would be established to manage regional council responsibilities such as health, education, and the provision of utilities. The regional charter or constitution would require equitable representation to any committee established to deal with specific issues.

#### 6.8. RAISING OF REVENUES:

The Western Arctic Regional Government would be empowered to raise revenues in a variety of ways. It would negotiate block Financial Transfer



Agreements for the delivery of programs and services. It would negotiate capital programs for infrastructure development and operating grants to fund the operations of the Regional Government. It could also conclude agreements with the federal and territorial governments for a share of taxes.

These agreements would be negotiated on the basis of a formula that would consider a number of factors including historic cost of service, normal escalation, population, additions or deletions to government programs, and the Regional Government's own source revenues.

The potential for own source revenues is significant in the long term. This is one of the major advantages of regional public government. The long term potential for oil and gas development in the MacKenzie Delta and the Beaufort Sea offers this opportunity. A regional authority with the ability to tax Crown lands could generate significant revenue. The Regional Government would then be in a position to provide superior government programs and services, and additional services not expected from a jurisdiction of comparable size.

The North Slope Borough on the north slope of Alaska is a regional government which is similar to the model proposed by the Joint Committee. It is able to levy real property taxes on improvements at Prudhoe Bay. The value of these improvements was assessed at twelve billion dollars last year. In 1992-1993 the North Slope Borough tabled an operating and capital budget of approximately \$300 million. These monies are used to deliver improved programs and services for the approximately six thousand people who live on the North Slope. Considerable additional revenues still accrue to the State of Alaska through royalties and direct taxes.

The Regional Government's enabling legislation would prohibit governments from considering land claim compensation, lands, resources or any other settlement rights and benefits in the conclusion of Financial Transfer Agreements.

#### 6.9. OPERATIONS AND STRUCTURE:

Communities participating in new forms of government in the Western Arctic must be confident they will exercise authority over new government institutions.

The Joint Committee has developed several specific proposals aimed at addressing this issue.

1. The legislation creating the regional government will enable the regional assembly (controlled by elected community representatives) to legislate. Thus the proposed new regional government should properly be considered as empowering

communities. The regional government will only exercise those powers conferred upon it by the regional assembly. Existing federal and territorial laws continue in place until the regional assembly empowers the regional government.

2. The Mayor and two Regional Councilors would be elected in region wide elections, but to ensure an equitable balance one of these councilors could be elected in the Delta, and the second from the Beaufort region. The selection of the Mayor would be done on a region-wide basis.
3. As in other governments it is expected that annual operating and capital budgets will be tabled for consideration by the Regional Council. Approval of budgets and financial matters will require a majority vote of the Regional Council.
4. Communities would decide the degree of autonomy or distance they wished from the regional authority. This provision would be subject to cost, efficiency, and practical considerations. To a large extent the regional government would be responsible for making laws, setting standards, raising and distributing revenues.

Community governments would be encouraged to assume responsibility for program delivery although the regional government would provide this service where communities were unwilling or unable to deliver services themselves. Regional government initiatives would follow the principle of "subsidiarity." The regional government in enacting region-wide standards or programs would leave to each of the member communities the decision to implement and administer the standards or programs in that community.

The principle of subsidiarity would acknowledge that some communities may wish to assume more authority over program delivery than others.

The delivery of municipal services in Inuvik is an example. Inuvik might well wish to join the Regional Government for the delivery of education, housing, or capital planning, but still deliver municipal services. Appropriate financial arrangements will be entered into between the Regional Government and the communities to ensure that communities have adequate resources available to effectively deliver these programs and services. While it is likely that communities would want direct control over programs that provide services to people, there are programs which are distinctly regional in nature and the regional delivery of them is appropriate. In this way cost effectiveness, efficiency and practicality are

maintained.

Housing programs are an example. Communities in the region may want to make decisions about the allocation of public housing; where new units are built in the community; the quality of units; how and who builds them. However it would be more appropriate for the regional government to negotiate capital housing programs in a Financial Transfer Agreement and buy bulk materials.

#### **7. REGIONAL AND COMMUNITY AUTHORITIES:**

The Joint Committee recognizes that communities may wish to assume some regional authorities as the capacity of communities to deliver programs matures over time. It would be important that the Regional Government's charter firmly establish that communities may elect to assume more or different authorities in a timely manner provided the principles of cost effectiveness, efficiency and practicality were maintained. The table on the following page outlines how authority could be divided between the regional government and its member communities. It highlights how communities could deliver important services to people and the complementary role a regional government could play.

**TABLE I**  
**DIVISION OF POWERS**  
**WESTERN ARCTIC REGIONAL GOVERNMENT**

| REGIONAL AUTHORITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | COMMUNITY AUTHORITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Regional taxation matters and Financial Transfers</li> <li>• Regional health including the regional hospital</li> <li>• Public safety and policing</li> <li>• Capital Planning</li> <li>• Regional Education matters; university entrance, Arctic College, Grollier Hall, distance education, capital planning</li> <li>• Utilities</li> <li>• Some municipal services in communities</li> <li>• Mineral Rights, Land Titles Leases, etc.</li> <li>• Region wide purchasing, POL, public works</li> <li>• Economic Development: regional investment incentives, benefits packages, tourism marketing</li> <li>• Intergovernmental Relations</li> <li>• Lotteries and casinos</li> <li>• Conservation and Renewable Resources</li> <li>• Corrections</li> <li>• Legal Services</li> <li>• Intercommunity Highway*</li> </ul> | <ul style="list-style-type: none"> <li>• Some taxation matters</li> <li>• Public health, preventative health, nursing stations</li> <li>• Community justice matters (circle sentencing etc.)</li> <li>• Housing construction, operation and maintenance, allocation</li> <li>• Community schools</li> <li>• Municipal services</li> <li>• Culture, Recreation, Language</li> <li>• Social Services; child welfare, guardianship, custom adoption, sfa</li> <li>• Bingo and lotteries licensing</li> <li>• Some aspects of correction</li> </ul> |

## **8. CONSTITUTIONAL AMENDMENTS:**

All governments need mechanisms to change their constitutions. It is important to identify how constitutional amendments can be made so complications are avoided in the future.

The matter of an amending formula need not be complicated. The Joint Committee proposes an amending formula which would require a 2/3 vote of the member communities of the regional government.

## **9. PROTECTING THE INHERENT RIGHT; TREATY OBLIGATIONS; INUVIALUIT AND GWICH'IN POLITICAL INTERESTS:**

The Joint Committee recognizes that restructuring government in the Western Arctic could impact on the inherent right to self government, treaty obligations and the political interests of the Gwich'in and the Inuvialuit.

Although the development of regional public government in the Western Arctic may be a part of self-government negotiations, it is only one of several proposals which may be pursued by either the Gwich'in or the Inuvialuit. Both land claim agreements provide for the involvement of the Gwich'in and the Inuvialuit in restructuring public government.

The Gwich'in and the Inuvialuit can pursue new forms of government either as self government negotiations, or as participants in the evolution of public government in the Northwest Territories.

Nothing contained in the Joint Committee's proposals will preclude the ability of either group to negotiate self government agreements or limit the ability of the Inuvialuit and the Gwich'in as aboriginal people to benefit from national programs or processes. Land claim agreements, treaty obligations, and the federal fiduciary responsibility to Aboriginal peoples will not be derogated by the negotiation of regional public government as they are protected in law.

Land claim agreements and treaty obligations will supersede not only regional government legislation, they will also supersede any new legislation constituting a new government in the western Northwest Territories. However for greater certainty the Joint Committee will ensure these important principles are restated in any legislation establishing a new regional government.

## **10. PROTECTING THE RIGHTS OF OTHERS:**

Restructuring public government in the Western Arctic will have an impact on non aboriginal residents. The Joint Committee believes the development of regional government is in the best interest of all residents, but appreciates that



non aboriginal people may have concerns with the proposal. It is important to restate that the proposals described in this position paper are for a public government. The regional government will be equitable, inclusive, and universal.

The Western Arctic will still maintain a relationship and a place in a new western Territory. The regional government proposal does not envisage a separation from the remainder of the Northwest Territories. Rather it contemplates a redistribution of political authority between levels of government to maximize authority at a local and regional level. The government in the west will continue to provide public government programs and services and may well deliver some programs the regional government does not. As an example, the North Slope Borough regional government delivers its programs, however, the State of Alaska is still involved in the delivery of some services.

#### **11. RELATIONSHIP BETWEEN REGIONAL GOVERNMENT AND A NEW WESTERN TERRITORY:**

Just as the Inuvialuit, Gwich'in and non aboriginal people of the Western Arctic share fundamental values and a common historical background, residents of this region share an ongoing relationship with the people and institutions that make up the remainder of the Northwest Territories. The creation of regional government in the Inuvialuit and Gwich'in settlement regions will not sever this relationship.

The creation of a new western Territory and the negotiation of self government options in land claim agreements are an opportunity for change. These events will make it possible for the Western Arctic to strengthen its place in the west. The intent is not to isolate ourselves but to create new relationships.

The IRC/GTC Joint Committee is interested in more local and regional authority and wishes to improve the quality of government programs and services. A new regional public government in the Western Arctic will still rely on a central government to provide certain programs and services. One example is in the area of justice. It wouldn't make sense for a regional government to establish its own court system. Another example is in health. A regional government is not likely to set up its own health insurance plan.

The real question is not whether there will be relationship between a Western Arctic Regional Government and a central government in the west, but rather what the nature of that relationship will be. The Inuvialuit and the Gwich'in want strong regional government not strong central government. The challenge is to create a regional government that can enjoy a supportive and complimentary relationship with a new government in the west.



## **12. THE PROCESS OF CONSTITUTIONAL CHANGE IN THE WEST:**

The development of a constitution for a new western Territory will be a complex and difficult process. There are many stakeholders and consensus on some issues may be difficult to achieve. This process may eventually be successful, but whether this happens before the creation of Nunavut in 1999 is another question.

The people of the Western Arctic know what they want and are anxious to achieve it. The process of developing regional public government in the Western Arctic should not be delayed because others are unable to make progress.

The Inuvialuit Regional Corporation and the Gwich'in Tribal Council will continue to participate as active partners in the development of a new western Territory but they also intend to move forward with the proposals outlined in this discussion paper. This document accompanied by enabling legislation will be a part of any self-government proposals tabled by either the Inuvialuit or the Gwich'in in any self-government negotiations with Canada.

## **13. SUMMARY:**

The people of the Western Arctic share fundamental values and a common history. Gwich'in and Inuvialuit beneficiaries as well as non aboriginal people live and work together in communities throughout the two settlement regions. While the Gwich'in and Inuvialuit may pursue their right to aboriginal self government, they also wish to improve the quality of government programs and services delivered to all residents of the region. This can be accomplished by incorporating a regional public government that is community driven, equitable, inclusive and universal.

### **SUMMARY IRC/GTC REGIONAL GOVERNMENT PROPOSAL MARCH 1993 GENERAL:**

- the proposal would establish a Western Arctic Regional Government
- the WARG would be governed by a Regional Council
- each member community would elect a Regional Councilor to the WARG
- two additional regional councilors would be elected in region wide elections

- a Mayor would be elected in region wide elections. The Mayor would chair the Regional Council and act as Chief Executive Officer of the Western Arctic Regional Government
- communities would opt in to the Regional Government by a majority vote of residents
- communities could also opt out of the Regional Government under exceptional circumstances
- the Regional Council would meet at least every three months
- administrative committees and departments could be established to manage specific programs such as health and education
- committees of the Regional Council, comprising Regional Councilors or their appointees, could be created to oversee administrative divisions or for important issues

#### **AUTHORITY:**

- wide ranging over programs and services currently delivered by the federal and territorial governments only after the regional assembly confers them
- authority would be derived from federal enabling legislation and complementary legislation if necessary from the Government of the Northwest Territories
- the boundaries of the Regional Government would include the Inuvialuit and Gwich'in Settlement Regions

#### **FINANCING:**

- would include broad Financial Transfer Agreements for program delivery and capital programs negotiated in a manner similar to the GNWT's formula financing agreement
- these agreements could include a share of federal and territorial taxes
- own source revenues would include real property taxation, license fees, lotteries and casinos, other measures

Gwich'in Self-government Negotiations

Position Paper

Prepared by: The Gwich'in Tribal Council

February 21, 1994.



# Gwich'in Self-government Negotiations Position Paper

February 21, 1994.

## Introduction

The Gwich'in are able to negotiate self-government agreements with the Government of Canada and direct the formation of a new government in the western part of the Northwest Territories.

## Processes

The Gwich'in are involved in four processes that are related to self governance in their communities:

### Constitutional Development - Western Part of the Northwest Territories

In the west, a Constitutional Development Steering Committee is mandated by the major political organizations to develop a constitution prior to the division of the Northwest Territories. The Steering Committee formed sub-groups to prepare for Constitutional Conferences, to be held in the Spring and Winter of 1994.

### Inuvialuit and Gwich'in Position on a Public Regional Government

This is a joint position paper to create a regional government for all residents in the Gwich'in and Inuvialuit Settlement Regions without affecting the two aboriginal groups self-government rights. Community leaders of the two regions at a recent conference approved the concepts of the proposal for submission to the above Constitutional Development process.

### Gwich'in Self-government Negotiations

The Gwich'in Self-government Framework Agreement as part of the Gwich'in Comprehensive Land Claim Agreement sets out the parameters for the negotiation of a self-government agreement that will be legislated (federal or territorial) or receive constitutional protection. Substantive negotiations have started with this position paper.

### Community Transfer Initiatives

Several Gwich'in communities are negotiating Community Transfer Agreements that delegate a degree of authority. This limited authority enables communities to deliver government programs and services.

### Purpose:

The purpose of this position paper is to provide Gwich'in views on:

- 1) the Objective of the "Inherent Right of Self-government";
- 2) the Power of the "Inherent Right of Self-government";
- 2) Institutions; and
- 3) Coordination of Self-government Negotiations and Initiatives.

### The Objective of the "Inherent Right of Self-Government"

The current Liberal Government stated in its campaign platform that:

"The cornerstone of a new relationship with Aboriginal peoples will be the recognition of the inherent right of Aboriginal self-government. A Liberal government will act on the premise that the inherent right of self-government is an existing Aboriginal and Treaty right within the meaning of section 35 of the *Constitution Act*, 1982. Recognizing the inherent right is consistent with the historical fact that Aboriginal peoples governed this land prior to the arrival of Europeans to the various regions of North America."

Because the existing right is not defined in *Section 35 of the Constitution Act, 1982*, it is worthwhile to state and examine the provisions of the Charlottetown Accord:

"The exercise of the right of self-government includes the authority of the duly constituted legislative bodies of Aboriginal peoples, each within its own jurisdiction:

- (a) to safeguard and develop their languages, cultures, economies, identities, institutions and traditions; and
- (b) to develop, maintain and strengthen their relationship with their lands, waters and environment

so as to determine and control their development as peoples according to their own values and priorities and ensure the integrity of their societies."  
...underlined authors emphasize.

The objectives of the inherent right of self-government can be drawn from the Accord by stating that the Gwich'in have the authority of the duly constituted legislative bodies.



A Gwich'in government will be able to pass laws within its own jurisdiction (geographic boundaries, members). Gwich'in laws can be passed to:

safeguard and develop:

- languages and culture .... traditions - for example, the Gwich'in can pass official language laws, laws on heritage sites, artifacts, etc., and traditional customs can be codified and enforced as laws;
- institutions - a Gwich'in constitution can only be developed, constituted and amended by the Gwich'in;
- economies - the traditional economy, an economy that is created by Gwich'in institutions and has the ability to raise revenue.

develop, maintain and strengthen:

- lands, water and environment - Gwich'in land and water rights are defined in the Gwich'in Agreement, however, the ability to pass laws over Gwich'in lands and resources could provide additional rights and powers.

to determine and control:

- their development as peoples - the Gwich'in would control and determine the delivery of programs and services that support a Gwich'in society.

### The Power of the "Inherent Right of Self-government"

Although the Gwich'in have the inherent right to self-government, the Gwich'in must determine the appropriate mixture of powers that are necessary to meet their self-government objectives. If the different processes, mentioned previously, are used the Gwich'in could control or be directly involved in all aspects of government.

Some matters will require extensive negotiations, especially financing of implementation. Self-government powers proposed, recognize Gwich'in First Nations rights to exercise or pass 'Gwich'in laws' and a consultation process with government prior to the passage of laws. The attached amendment to Chapter 5 - Self-government in the Gwich'in Comprehensive Land Claim Agreement provides for the constitutional recognition of Gwich'in Self-government powers.

Gwich'in First Nations may also work closely with public government and even adopt public government institutions, laws, programs and services. However, in all areas where public government exercise powers that affect the Gwich'in, the consent of a First Nation must be obtained. Public Government may have or share the following powers:

- transportation,
- community infrastructure,
- municipal services,
- housing,
- communications, and
- post secondary education and training.

### Institutions

Two Gwich'in communities have discussed the matter of institutions that would be appropriate to govern their communities, Tsiigehtchic (formerly Arctic Red River) and Aklavik. These communities propose models that reflect: predominately Gwich'in populations (Tsiigehtchic, and Fort McPherson) and mixed populations (Aklavik and Inuvik).

#### Tsiigehtchic

This community consistently stated to government that the Band Council is the sole governing institution. Six years ago, the community decided to form a municipal government because the Territorial Government would not deal with a purely aboriginal organization to deliver public programs and services. The Gwich'a Gwich'in Council states again that there is no need for two governing institutions, in a small community of 120. The Council recognizes that it must guarantee a certain level of service to the public and will provide other residents of the community: access to programs and services; and the right to appeal to independent body whether those programs and services are being provided in a fair and equal manner.

#### Aklavik

Although Aklavik is predominately aboriginal, the population consists of both Inuvialuit and Gwich'in members. Both Inuvialuit and Gwich'in organizations developed a model that recognizes the 'inherent right', as well as, allows for public participation. The proposed government model is composed of eight councillors and a Chairperson -- three councillors appointed each from the Aklavik Gwich'in Council and Aklavik Community Corporation -- two councillors and the Chairperson will be elected at large.

The organizations of the Inuvialuit and Gwich'in shall continue to exist for the purposes of land claims and other possible initiatives that the two aboriginal organizations may wish to jointly or separately carry out.

#### **Aklavik Community Council**



These models should be considered in the context of the Regional Public Government proposal for the Beaufort and Delta. Although the regional government will deliver regional programs and services the community will determine over time which of these programs or services will be better developed and implemented at a community level or by the First Nations.

#### **Coordination of Self-government Negotiations and Initiatives**

During the negotiations of land claims there were very clear objectives and only one process for negotiations. In striking contract, the four related self-government processes defuses Gwich'in resources and attention on a very complex and difficult subject.

The Gwich'in and Government should come to an agreement to simplify self-government negotiations and initiatives, for example:

- the joint Inuvialuit and Gwich'in proposal on a Regional Public Government in response to Constitutional Development in the west; and
- a combined self-government and community transfer process will allow for the implementation of interim self-government arrangements during self-government negotiations.

The following is an outline of a combined self-government negotiations and interim self-government arrangements.

1) Self-Government Negotiations (Based on Framework Agreement)

Negotiations of:

- the structures of governing institutions including Gwich'in First Nation, Tribal Nation and Public Government;
- the list of the 'Matters for Negotiations' from Framework Agreement (programs and services); and
- the general authority of government institutions over each of the listed 'Matters for Negotiations' (community, region/tribal).

2) Self-government Implementation Plan (after principles have been agreed in (1) Self-government Negotiations).

The Plan, in order, would include:

- immediate delegated transfer of funds, administration and delivery of programs and services (currently carried out through GNWT's Community Transfer Initiative and Federal program and service transfers);
- steps to make appropriate interim policy, regulatory or legislative amendments for the Gwich'in to assume a devolved authority over a program or service;
- timetable for the completion of self-government agreement/legislation that will recognize Gwich'in legislative authority over certain matters; and
- financial matters for interim and long term funding agreements.

## **Appendix I**

### **Chapter 5 - Amended Self-Government Agreement**

## **Chapter 5 - SELF-GOVERNMENT**

(Amend Gwich'in Comprehensive Land Claim Agreement - to allow for Section 35 recognition).

### **Objectives**

5.1.1 Self-government shall meet the following objectives:

- a) To recognize the right of the Gwich'in to govern themselves and their lands; and
- b) To enable the Gwich'in to control their own institutions and pass laws appropriate to the governance of those institutions and members.

### **Capacity and Powers**

5.1.2. Gwich'in First Nations shall be constituted by the majority of the participants in each community, each First Nation's constitution shall include, but not limited to the following matters:

- a) membership;
- b) financial administration of the First Nation;
- c) the conduct of elections, referenda and accountability to participants;
- d) the creation of administration bodies and agencies; and
- e) procedures for the amendment of First Nation constitutions.

5.1.3 The Gwich'in First Nation shall have the right to pass laws, policies and procedures governing, participants and Gwich'in lands in relation to the following matters:

- a) Gwich'in heritage including, culture, language and the application of spiritual beliefs and practices to the delivery of programs and services;
- b) control, management and administration over Gwich'in lands, including the preservation and management of natural resources;



- c) taxation, including direct taxation of participants, and of interests in Gwich'in lands and resources, and of occupants and tenants of Gwich'in land;
- d) education and training of participants, including schools and post secondary education and trades;
- e) social and welfare services;
- f) health services;
- g) public order and safety;
- h) the construction, maintenance and management of roads and traffic;
- i) local government infrastructure, including programs and services;
- j) the operation of businesses, professions and trades;
- k) economic development and tourism;
- l) administration of justice, including:
  - i) civil and family matters,
  - ii) wills and estates,
  - iii) the prohibition of the sale, barter, supply, manufacture or possession of intoxicants and any exceptions to a prohibition of possession; and
  - iv) the devolution, by estate or intestate succession, of real property of participants and personal property of participants ordinarily resident.
- m) the imposition on summary conviction for the contravention of any law made by the First Nation, of fines or imprisonment, including:
  - i) a maximum fine or maximum term of imprisonment or both;
  - ii) community service;
  - iii) any other traditional penalties or resolutions which the First Nation may determine; and

- iv) a law made by the First Nation may require that a license or permit be obtained. That law may provide for the issuance of a license and the charging of a fee.
  - n) any other matter which may be ancillary to the above or agreed to by government and the First Nations at a later date.
- 5.1.4 Prior to the passage of any law making powers or capacities, the First Nation must consult with government on:
- a) the extent to which the First Nation will exercise their jurisdiction;
  - b) the extent, under the direction of the First Nation, in which government shall exercise jurisdiction that affect the Gwich'in. The Gwich'in may establish the terms and conditions which government must follow in exercising that jurisdiction; and
  - c) the funding arrangements, if necessary, whereby government will provide the First Nation with the grants it requires to carry out its legislative and administrative mandate.

#### **Regional and Tribal Governments**

- 5.1.9 Government and the Gwich'in First Nations agree to establish a regional public government by the passage of a Government of Canada Act, prior to 1999.
- 5.1.10 Gwich'in First Nations must agree collectively or individually which of the matters listed in 5.1.3. should be carried out by a Gwich'in Tribal First Nation.
- 5.1.11 A Gwich'in First Nation may transfer full legislative authority to a Gwich'in Tribal First Nation.

## **Appendix II**

### **Reshaping Public Government in the Beaufort/Delta Regions**



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FOR THE NEW  
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*Prepared by:  
The Association of Western Tax Based Municipalities*





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**I INTRODUCTION AND OVERVIEW**

**1. Introduction**

The Association of Western Tax Based Municipalities (AWTBM) is pleased to be a participant in the development of a constitution for the western part of the Northwest Territories. It may seem to some that the process of constitutional reform has taken considerable time already. Working on developing a new constitution demonstrates to us, however, how much further we have yet to go before we can achieve a meaningful governing constitution.

We must make clear that while we are an association of municipalities, we believe it is our obligation to represent the interests and views of all of the citizens of our respective municipalities. In order to fulfil our obligations to our citizens, it is our view that there must be an ongoing process of public consultation in order that we may represent the views of our citizens on a constitution for the New Western Territory. It should be realized that the AWTBM is different from the other groups engaged in this process as we are an association of governments individually elected by diverse electorates.

We recognize that the degree and nature of consultation which we intend to pursue may to some extent parallel the process of public consultation that the Constitutional Development Steering Committee will embark upon at a later date. In our view, it is necessary to obtain the views and comments of the citizens of our respective municipalities on this discussion paper

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so that a representative position can be brought forward at the Constitutional Conference now scheduled for September, 1994.

We should also mention that this Discussion Paper is the culmination of the meetings and discussions within the AWTBM Committee. A considerable amount of compromise and consensus building occurred within that process. Also, the members of the AWTBM held public meetings and forums on the Interim Discussion Paper which was submitted to the Steering Committee in August, 1993. The public input received was largely in agreement with and supportive of the matters contained in the Interim Discussion Paper. Therefore, there are not extensive differences between this Discussion Paper and the Interim Discussion Paper. This Discussion Paper represents the consensus of the AWTBM members and the public input received.

This Discussion Paper is based upon a number of principles and considerations which the AWTBM considered appropriate for the development of a new constitution for the New Western Territory. However, at this point, it may be appropriate to emphasize two of the underlying considerations which give rise to some of the positions taken in this discussion paper. Firstly, the AWTBM is of the view that a strong central territorial government is both necessary and desirable for the New Western Territory. The second consideration is in some respects a corollary of the first consideration. The AWTBM is of the view that extreme care must be

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taken to avoid provisions in a new constitution which could result in fragmentation of the New Western Territory. It is not desirable to have a constitution which might, in effect, create several new "territories" within the Western Arctic. We see this as a potential risk arising from some of the recommendations of the Bourque Commission. The sovereignty proposed to be accorded to the district level of government by the Bourque Commission may be going too far. While we agree that more local autonomy is desirable, we also believe that there should be a greater level of authority for the territorial government than that which was suggested by the Bourque Commission.

We would also like to make a brief comment on the draft principles which were adopted by the Steering Committee on December 3, 1993. The AWTBM strongly endorses a number of the draft principles. However, some of the conclusions and recommendations in this discussion paper may not be totally consistent with some of the draft principles. We have kept the draft principles in mind when preparing this Discussion Paper, but we believe that further dialog is necessary before the draft principles can be finalized. We would ask that the Steering Committee take into consideration the position of the AWTBM when the draft principles are discussed further.

We would also like to state that we have serious regrets that the funding provided by the Territorial Government to date has not been adequate enough to conduct additional research

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which we believe is essential to developing a comprehensive constitutional position. Furthermore, the time available to prepare these interim reports has not allowed us to review and consider the range of issues to the extent we believe is desirable or necessary to achieve a comprehensive document. In short, we believe that a much more thorough and comprehensive paper could have been produced if we had had adequate funding and reasonable time for preparation.

**2. Process**

The view of the AWTBM is that the process for constitutional development, at this point in time, is just as important as the specific constitutional proposals which are being advanced by various groups. The development of a constitution for the New Western Territory must be founded on consensus building and reasonable compromises. It would be very unfortunate if the final document meets the same fate as the Charlottetown Accord. We will all have to live together and the new constitution should accommodate the reasonable aspirations of all peoples within the New Western Territory. We are perhaps stating the obvious when we say that all groups involved in the development of a new constitution should keep this mind. The AWTBM intends to approach the constitutional conference with a spirit of co-operation and flexibility. We are optimistic that a consensus can be achieved, but we also acknowledge that there is the possibility that not all issues may be resolved within the present time frame. A constitution is a living document which, in some instances, requires time to evolve. For



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example, the relationship between different levels of government may not be totally resolved in the current process. Some of these issues may have to be resolved on an ongoing basis subsequent to the actual adoption of a new constitution.

The AWTBM also sees the consensus process being conducted on various levels. As well as the process being proposed by the Steering Committee, the AWTBM also sees itself as having a role in communicating with its citizens. The AWTBM intends to have an ongoing public consultation process both before and after the constitutional conferences. A constitution should reflect the attitude and philosophy of the people it is intended to govern. The AWTBM desires to come to the constitutional discussion with confidence that it is reflecting the views of the people it represents.

In our Interim Discussion Paper we expressed a concern as to the degree of the involvement of the Federal Government in the current process. We are very encouraged by the fact that the Federal Government is now becoming more involved and will be an intricate part of the process from this point forward. The content of the constitution for the New Western Territory must be developed by northerners, but will also be the subject of discussions and negotiations with the Federal Government. Therefore, it is essential that the Federal Government be involved in the present process.

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**3. A Note on Terminology**

In this discussion paper we refer to the geographical area to be covered by the new constitution as the New Western Territory. This is the term used by the Bourque Commission in its April 1992 report entitled Working Towards a Common Future. The term, of course, refers to that part of the existing Northwest Territories exclusive of the area which comprises Nunavut.

The adoption of the term "New Western Territory" in this discussion paper should not be viewed as a final position on the name for this area. It is conceivable that names of aboriginal origin such as Denedeh could be adopted. It is also conceivable that the new territory could be called Northwest Territory. In our view, the name of the new territory will have to be discussed with the people of the territory before a name can be ultimately adopted. When we refer to "the constitution", we will generally mean the constitution for the New Western Territory. When we refer to the Canadian Constitution, we will generally refer to the specific Constitution Act (e.g. the Constitution Act, 1982, the Constitution Act, 1867).

We recognize, however, that the use of the term "New Western Territory constitution" may be somewhat of a misnomer as it is not clear whether the constitution would or could be entrenched. It is likely that what we refer to as the constitution will be a piece of legislation enacted by Parliament to replace the existing Northwest Territories Act.

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It should be made clear that we are not, at this time, proposing provincial status for the New Western Territory. Nor should the creation of and the constitution for the New Western Territory be viewed as creating provincial status. Further, care should be taken to assure that nothing in the new constitution will cause an impediment to possible provincial status in the future. We realize that the creation of provinces would, under section 42 of the Constitution Act, 1982, require the consent of seven provinces having 50 percent of the population and Parliament. In short, the term "constitution" as used in this report refers to what would be the founding legislation for the New Western Territory. It may not be an entrenched constitutional document so as to be included in the schedule to the Constitution Act, 1982. Nonetheless, it is our position that as the constitution will ultimately represent the desires and aspirations of the residents and leaders of this new territory and the federal government should accord the legislation some deference. As will be discussed in the section on the amending formula, it is essential that future amendments to the constitution only be made with the consent of the residents.

In its report, the Bourque Commission recommended that a district form of government be established that would be distinct from the territorial government. There would be two orders of government under the Bourque Commission proposal; the territorial and the district. As will be discussed later in this discussion paper, we do not agree with the Bourque Commission's proposal for district government. We have proposed in this discussion paper a second order

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of government that could be viewed as more oriented toward the existing municipal structure. In order to distinguish our proposal from that of the Bourque Commission, the second level of government will be referred to a "municipal/district government". The rationale and explanation of how municipal/district government would operate will be addressed later in this discussion paper.

In discussing the people of the New Western Territory we will use the terms "Northerners" and "Aboriginal Northerners" where possible. Depending upon the context, "Northerners" will either mean all residents of the New Western Territory or those residents who are not Aboriginal Northerners. The term "Aboriginal Northerners" will refer to all First Nations, Indians, Inuit, and Métis peoples of the New Western Territory.

#### **4. Aims of the Constitution**

Constitutional documents can serve the purposes of delineating the relationships between the state and individuals and of establishing forms of government. In a federal system, a constitution serves to outline the relationships and powers of the orders of government. The Canadian Charter of Rights and Freedoms establishes the rights of individuals and groups in relation to government. The Constitution Act, 1982, in part, establishes the rights of Aboriginal persons. The relationships between the orders of government and Canada are set out in the Constitution Act, 1867.

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The Bourque Commission made an admirable start in identifying the areas for constitutional development in the New Western Territory. That report recommended a constitution that addresses the relationship between the state and individuals and groups. It also recommended two distinct forms of government and outlined the powers and responsibilities of the district and territorial orders of government.

The Bourque Commission Report serves as a reference point for many of the comments made in this Discussion Paper. This discussion paper is not, however, intended to be a mere reaction to the Bourque Commission's proposals. We would like to discuss some of the principles on which we believe a New Western Territory constitution should be based.

To begin with, there is often a tendency for people to want to include too much in a constitution. In an article entitled "Some Rules of Constitutional-Prudence for Contemporary Constitution Makers", Professor Edward McWhinney set out 15 rules for "constitution makers". Two of his rules are, we believe, worth repeating:

"Rule 1:      Keep the constitutional charter short. A constitution is neither a municipal ordinance on sewers and drains nor a master planner's detailed blueprint for a new community welfare programme . . .

Rule 2:      Do not try to solve too many and too specific, purely temporary and short range problems in the charter. A constitution is not a railway excursion ticket, good for one journey only, on one particular day and to one particular place; but is intended to



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endure, if not for the ages then at least for a certain term of years." <sup>1</sup>

We are of the view that participants should be mindful of the recent attempts that have been made to amend the Canadian Constitution. For instance, although the Charlottetown Accord was the product of an agreement by the provinces, the territories, the federal government, and national Aboriginal groups it did not succeed when put to the ultimate test; the people. One of the reasons for the failure of the Referendum on the Charlottetown Accord may have been the number of issues with which Canadians were confronted. It was impossible to accept one part of the Accord and yet reject another. In any event, one of the objectives for a New Western Territory constitution should be to create a document that is not overly complex. Another aim is to ensure that residents are never faced with the dilemma that confronted voters with the Charlottetown Accord, namely the "take it or leave it" option on which we were asked to vote. Consultation may be able to overcome any difficulties in this regard.

Another aim of the constitution would be to ensure that the people of the New Western Territory do not have more levels or orders of government than they need or which they can afford. Since April 1992 when the Bourque Commission reported, it is probably safe to say that Canadians and their governments have become increasingly aware of the precarious financial situation which this country finds itself. The reality of deficit reduction and sensible

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<sup>1</sup> Edward McWhinney, "Some Rules of Constitutional-Prudence for Contemporary Constitution Makers", *Canadian Politics: A Comparative Reader* (Edited by Ronald G. Landes), (1985), pp. 7 and 8.



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spending by governments must be considered by those undertaking the responsibility of preparing a constitution.

We recognize, however, that the North occupies a unique position in Canadian life. The vast area, the sparse population, the unique infrastructure requirements mean that governments in the New Western Territory will be unable to discharge their responsibilities without financial assistance from the federal government. Nonetheless, there should be either implicit recognition in the drafting of the constitution or an explicit recognition in the constitution itself that governments have an obligation to the people that they will be able to discharge their responsibilities in a fiscally responsible manner. A constitution should not create obligations for governments that cannot be kept.

## **II FORM OF GOVERNMENT**

We believe that the structure and powers of government are of fundamental importance in the New Western Territory constitution and accordingly have devoted most of our attention to these issues.

The Bourque Commission recommended a district form of government that would be distinct from the Territorial order. The Commission stated at page 26:

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"In order to meet aspirations for more Aboriginal First Nations, community and regional government control and decision-making, the Commission recommends that consideration be given to establishing a district order of government in the New Western Territory constitution".

The Commission then recommended that the New Western Territory constitution establish a district order of government which "may be public, exclusively Aboriginal or a combination of both." The Bourque Commission gave essentially province like powers to districts. Under those proposals we would have had a federal system established in the Northwest Territories.

One of our major concerns with the levels of government proposed by the Bourque Commission is that some of the powers to be assigned to the district form of government should be more properly with the territorial level of government. Furthermore, the fact that the district order of government would be, in many respects, more powerful than the territorial order is inappropriate. In fact, the strict division of responsibilities that the Bourque Commission proposed, would lead to much intergovernmental wrangling and create extensive bureaucracies throughout the north that would lead to overly costly and perhaps inefficient government. As will be discussed in the section entitled "Aboriginal Self-Government", it appears that the Bourque Commission attempted to achieve a form of aboriginal self-government through the district system proposal. In our submission, aboriginal people should be able to achieve self-government in an appropriate forum outside of the present process.

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In evaluating what form of government should be adopted in the New Western Territory constitution, we believe it is useful to return to first principles about the purpose and role of governments. In order to clarify the form of government that would be appropriate for the New Western Territory, it is important to examine the rationale for a federal system which includes local government. It is, therefore, important to examine the principles behind federal systems and local governments so that we can examine how they correspond with the situation in the New Western Territory. We think they are useful focal points in formulating an alternative to the Bourque Commission's recommendations.

**1. Justifications for Federal Systems and Local Governments**

It may seem odd to start a discussion of the government form for the New Western Territory constitution by discussing federalism. We know that Canada has a federal system with different orders of government (provincial and federal) as prescribed in the Constitution Act, 1867. Essentially, the reason for beginning our discussion by referring to federalism is because of the form of government that the Bourque Commission recommended. Under their proposal district governments would have powers equal to or greater than those of the territorial government. The district and territorial governments would each be sovereign within their areas of jurisdiction with seemingly very few consultative mechanisms. The New Western Territory would then have its own federal system operating within the Canadian federal system.

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A review of the many authorities that exist on federal systems indicates that one of the primary reasons for such a form of government is that a central government, operating as the sole sovereign order of government, is incapable of adequately responding to the needs of a local population. Consequently, when a state encompasses several distinct areas the central government cannot adequately address the interests and concerns of one local population as distinct from other local populations located throughout the state. The nature of local interests and the structure of government in a federal state was discussed in a report prepared by Richard Simeon and Ian Robinson for the Macdonald Royal Commission, entitled State, Society, and the Development of Canadian Federalism.<sup>2</sup> At page 11 those authors state:

"Federalism, with its provincial governments implies easier access to some measure of political power for groups whose members are clustered together in the same region. It is this characteristic of federal systems that lead Maritimers and Francophones (who recognized that they would become minorities in the new nation) to insist on such institutions in 1867. The enduring impact of the federal structure of the Canadian state has been to make it easier to organize and mobilize collectivities that are territorially concentrated than those which are not."

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<sup>2</sup> Simeon, Richard and Robinson, Ian, State, Society, and the Development of Canadian Federalism (1990) Ministry of Supply and Services Canada.

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It is interesting to note that, in some senses, the justification for a federal system is similar to that of a local government. In writing about Alberta municipal governments, Professor Jack Masson states the following as one of the justifications of local government <sup>3</sup>:

"The major advantage of local government is that it brings the political leaders and civil servants in close contact with the people. For many people, grass-roots democracy has a hollow ring: in all too many areas the citizenry feels it has little control over its destiny. Even though political leaders make decisions affecting all of us, we seldom see them, except at election time. The charge has been made that at the provincial and federal levels, civil servants no longer seem to be 'servants' of the people. In small communities, however, political decision-makers are accessible and attempt to consult their constituents. Admittedly, few people actually attend council meetings and hearings, but there is continual informal discussion of pertinent community issues with political leaders on the streets. In a community with conscientious elected officials, people feel confident that they will be heard and taken seriously on issues that will affect them. The clerk-treasurer, for example, is an accessible civil servant, not just a cog in a distant bureaucracy. Besides, a single vote can make the difference in the outcome of an election."

While the justifications for some form of local government may be similar to the justifications for a state or sub-national form of government in a federal system, the structures created and the systems are much different. A definition of a federal system given by one author is as follows <sup>4</sup>:

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<sup>3</sup> Masson, Jack, *Alberta's Local Governments and Their Politics*, (1985), University of Alberta Press, p. 9.

<sup>4</sup> Stevenson, Garth, *Unfulfilled Union: Canadian Federalism and National Unity*, (3rd Edition), (1989), Gage Educational Publishing Company, p. 8.



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"It is probably rash to attempt yet another definition of federalism when so many authorities have failed to agree on one that is totally satisfactory. Possibly no single definition of so elusive and controversial a concept could be satisfactory for all purposes. Nonetheless, the following definition is offered in the belief that it meets three essential criteria for a definition of federalism:

- (1) The definition should not be unduly restrictive;
- (2) It should serve to distinguish a federal state both from a unitary state and from looser forms of association; and
- (3) It should emphasize the political aspects of federalism.

With these criteria in mind, federalism will be defined as follows:

It is a political system in which most or all of the structural elements of the state (executive, legislative, bureaucratic, judiciary, army or police and the machinery for levying taxation) are duplicated at two levels, with both set of structures exercising effective control over the same territory and population. Furthermore, neither set of structures (or level of government) should be able to abolish the others jurisdiction over this territory or population. As a corollary of this, relations between the two levels of government will tend to be characterized by bargaining, since neither level can fully impose its will on the other."

When the Bourque Commission proposal is examined against this definition of federalism, it seems clear that the Commission has recommended establishing a federal system for the New Western Territory. Indeed, it appears as if the Commission has recommended a rather rigid form of federalism with water-tight compartments in terms of the division of power between the two orders. Water-tight compartments mean that jurisdiction on all matters is clearly divided between the two orders so that a power is clearly exercisable by one order of government, not both. It has taken Canadian courts many, many years to find mechanisms to



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deal with overcoming a strict interpretation of the division of powers as would be the case with water-tight compartments. Professor Katherine Swinton helps draw together some of the concepts we have been discussing when she states:

"Similar laws may fit within both federal and provincial heads of power. For example, the federal Parliament can make misleading advertising a crime under its criminal law power, but the provinces may give a civil remedy for the same conduct or even penalize it under their jurisdiction over property and civil rights in section 92(13) of the constitution. The courts often uphold such legislation using the 'double aspect doctrine', whereby they acknowledge that some laws may have both federal and provincial purposes. While the Fathers of Confederation may have wished for exclusivity of legislative powers or 'water-tight compartments' between federal and provincial governments, it became clear early in the interpretation of the constitution that there must be some overlap or entanglement between federal and provincial regulation, for provincial and federal governments often have good reasons, that can be supported by their distinct heads of legislative power, for dealing with the same activity. Even if the courts of an earlier era might have preferred a classical federal system with water-tight compartments, they could never ignore the aspect doctrine and, as governments became increasingly interventionist in the second half of the 20th century, there was a need for more frequent resort to this doctrine, as the opportunities for overlap between the regulation of the two levels of government expanded.<sup>5</sup>

In our view, the system proposed by the Bourque Commission could be one characterized by considerable litigation between the orders of government in an effort to clarify powers and jurisdiction. As will be discussed in our section on "Structure", while we are of the opinion that there should be two orders of government operating in the New Western Territory we do

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<sup>5</sup> Swinton Katherine, *The Supreme Court and Canadian Federalism: the Laskin-Dickson Years*, (Carswell, 1990), p. 28.

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not believe that they should be fully sovereign so as to result in continual confrontation between the orders of government.

**2. Structure**

In this process of constitutional development, we must be continually reminded that we, as residents and stakeholders, have an almost unprecedented opportunity in this day and age to create structures of government that can meet the needs and aspirations of residents as individuals and as groups. The New Western Territory is a unique mix of peoples, resources, land, and history. We should not be bound to precedent but should look to the best way to solve the needs of our people.

We believe that the remoteness and uniqueness of Northern communities and the diverse interests of Northerners living in those communities are sufficiently varied to justify the identification of a sub-territorial unit of government in the constitution and the allotment of certain powers to that level of government. This sub-territorial level of government we refer to as municipal/district government which would be recognized in the New Western Territory constitution. In our view, given the sparse population and somewhat slender fiscal resources of the New Western Territory, the justification does not exist for municipal governments in addition to municipal/district government. In essence, we believe that what are now municipal governments should become municipal/district governments and would have the base powers

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which we are suggesting for the municipal/district government. Existing cities, towns, villages, and hamlets would each become municipal/district governments. In certain cases this may mean extending the boundaries of a present municipality. At this early stage we cannot adequately determine what municipalities would have to be extended to make a municipal/district.

The number of municipal/districts and their boundaries would be determined prior to any enactment of the New Western Territory constitution. The actual municipal/districts and their boundaries could be included as a schedule to the constitution. While we realize that the creation of new municipal/districts or the alteration of municipal/district boundaries could be characterized as an amendment to the constitution, this is one area where we do not recommend a full referendum for the entire New Western Territory be held to amend the constitution (see Section on Amendment of the Constitution). Alterations to boundaries or the creation of new municipal/districts should be able to be accomplished by Orders-in-Council of the territorial government.

In keeping with the rest of our submission, councils for the municipal/districts would be democratically elected by all of the people within each district. In our view, there is no requirement that this level of government be constituted with a full legislature as would the territorial assembly. The municipal council structure should be adequate. Likewise, it is not

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our view that legislation be adopted in the municipal/districts in the form of Bills and Acts as is the case in Parliament, provincial legislative assemblies, or the territorial assembly. The present manner by which municipal legislation is given effect (namely resolutions and by-laws) should be maintained.

The difficulty arises in terms of what legislation would govern the operation of municipal/district governments. If this level was to be "fully sovereign" as was proposed for district governments in the Bourque Commission report, then the territorial legislature could not make laws with respect to districts. We have not prepared a blueprint for the operation of municipal/district governments but at this time we see a need for overlapping jurisdiction and responsibilities.

With respect to the territorial government, it is our view that they should have adequate power so as to provide for the services that residents require. The territorial government should, in our view, be democratically elected on a majority vote basis and not a proportional representation basis.

We do not favour guaranteed representation for any group or interest in the territorial legislature. In our view, the legislature should be elected on democratic basis. In order that a municipal/district government can exercise sufficient authority to meet the demands of

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residents and in order to discharge its responsibilities, we recommend that they be given specified powers in the New Western Territory constitution.

We recognize that sovereign orders of government can exercise full authority within their jurisdiction. However, the municipal/district level of government we are proposing can probably best be described as being "quasi-sovereign" in nature. Therefore, as a matter of caution, we would suggest that the constitution specifically provide that municipal/district governments have all of the powers of a natural person. This would eliminate any concern in respect to the ultra vires doctrine which has traditionally been applied to municipalities. The ultra vires doctrine provides that a municipality can only exercise those powers which are specifically granted to the municipality or which are necessary for the carrying out of its objects. If municipal/district governments are given the powers of a natural person, this would resolve this area of potential uncertainty.

In our view, the territorial government should have adequate powers so as to provide for the services that residents require. Ridings would be drawn up by a boundaries commission as is done in other jurisdictions according to the principles of fair and effective representation as articulated by the Supreme Court of Canada in the Saskatchewan Electoral Boundaries Reference. In our view, the New Western Territory would be strengthened by Aboriginal Northerners and Northerners sharing the land, and the government of the new territory.



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In our view, the general approach to be taken in addressing the issue of distribution of powers between the territorial and municipal/district levels of government is that there should be a strong territorial level of government with powers assigned to it which approximate many of the provincial powers. There should, however, be an explicit recognition of the municipal/district level of government. The territorial government could also enact legislation to address matters of territorial concern, but nothing in territorial legislation should abrogate or derogate from the powers and responsibilities granted to municipal/districts in the New Western Territory constitution. As a statement of principle, legislation affecting municipal/districts should, to the extent possible, be done in consultation with that level of government. In our view a mandatory process of consultation should be contained in the new constitution which would facilitate greater co-operation between the territorial government and municipal/districts. While difficult to entrench, it is our view that the spirit of co-operation should guide territorial legislation affecting municipal/districts.

We propose that certain powers be assigned to the municipal/districts in the New Western Territory constitution. Nonetheless, we believe that creative solutions must be explored in order to ensure that residents are not over-burdened by government. By the same token, Northerners should also be provided with assurances that the municipal governments that currently respond to their needs will continue to do so as municipal/district governments. As will be discussed in the "Powers and Responsibilities" section, not all municipal/districts may



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be able to exercise the same powers and responsibilities. We will discuss how the territorial government may exercise some of the responsibilities not exercised by certain municipal/district governments.

The working relationships between the municipal/district governments and the territorial government would, of course, have to develop over time. It would be optimal if the legislation involving or touching upon municipal/districts be developed in consensus with municipal/districts. The difficulty lies in finding a mechanism to mandate consultation. We would much rather have a spirit of co-operation exist than to have parties examining the law to see what would constitute a minimum level of consultation before action could be taken. Therefore, while the constitution will contain instances and examples of authority that should be accorded to the municipal/district governments, there is no doubt that a lot of the work will have to be undertaken in order to have a spirit of trust and co-operation. We must work together as fellow residents of the New Western Territory. The people expect no less.

### **III POWERS AND RESPONSIBILITIES**

In the report so far, we have attempted to separate the issue of the form of government as a distinct heading from the powers of government. It is difficult to separate these two features

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as the very nature of what shapes a government will be determined in part by the responsibilities it exercises.

At present the responsibilities and powers of the territorial government, formally the Commissioner in Council, are outlined in the Northwest Territories Act. The specific items or responsibilities allocated to the Commissioner in Council are largely stated in section 16 of that Act. These powers resemble, although are not identical to, the responsibilities given to provinces under section 92 of the Constitution Act, 1867. In fact, section 17 of the Northwest Territories Act prescribes that nothing in section 16 shall be construed as granting greater powers for any subjects than are given to the legislatures of the provinces.

Most of the responsibilities for tax based municipalities are primarily contained in the Cities, Towns, and Villages Act, the Planning Act and the Property Assessment and Taxation Act. The territorial government can legislate in this area by virtue of section 16(c): "municipal institutions in the territories" and (t): "all matters of a merely local or private nature".

The Bourque Commission has recommended that district governments be given what we perceive to be sweeping powers more appropriate to the territorial level of government. Indeed, the district governments would be the more powerful of the two orders of government in the New Western Territory as the residual power would rest with the district governments

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as opposed to the territorial government. We refer to the proposal at page 31 of the Bourque Commission report which recommends that the district order have the following power:

"such other matters, including the above, where authority may be shared with the central government, or where no provision has been made for the central government to exercise authority".

In determining what powers the levels of government in the New Western Territory should possess, we believe that it is necessary to refer to the "Aims of the Constitution" that were discussed earlier in this discussion paper. As we indicated, government should exist only when it can best represent the interests of the people. It is not our intention nor should it be anyone's objective to establish levels of government that simply create more bureaucracy, duplication and overlap. In a number of areas, we believe that these unfortunate consequences would result from the proposals in the Bourque Commission report.

**1. What Powers Should There Be?**

In our view, the territorial government should be strong and maintain many of the powers which it currently has under the Northwest Territories Act and which resemble those enjoyed by a province. This would include maintaining the existing shared responsibilities between the Federal and Territorial Governments. Further, there should be recognition given to the funding responsibilities of both the territorial and municipal/districts governments and adequate access

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should be granted to appropriate revenue sources. In this respect we would note that there should be access to resource revenues. We believe that the position of the territories is somewhat analogous to that of the Western provinces prior to the execution of the Natural Resource Transfer Agreements in 1929.

What we wish to avoid is the situation where there are 15, or how ever many, municipal/districts established with province-like bureaucracies. In our view, this would be economically inefficient. We note that many of the powers that the Bourque Commission would make available to the district governments could better be performed by a territorial government. In this regard, we refer to the following examples of powers which appear appropriate for the territorial level of government:

1. training and upgrading programs;
2. education standards;
3. health care and social services standards;
4. administration of justice;
5. renewable resource management;
6. controverted elections;
7. licensing of businesses, trades and occupations;
8. incorporation of companies;
9. property and civil rights;

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10. the preservation of game;
11. protection of the environment;
12. transportation within the territory;
13. agriculture;
14. management of wills and estates;
15. lotteries;
16. official languages;
17. solemnization of marriages;
18. regulation of non-municipally-owned utilities; and
19. general residual power.

## **2. Specific Powers**

In terms of responsibilities that should be borne by the municipal/district level of government, there are many areas that we believe should be allocated to that level of government in the New Western Territory constitution. We will also discuss some responsibilities that should be shared between the two levels of government. We will refer to these as hybrid areas.

Matters that are of a local nature should be dealt with by the municipal/district level of government. It is conceivable that the territory covered by one municipal/district will be much larger than another municipal/district. Given that the needs and circumstances faced by the

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municipal/districts will differ, there should be some flexibility in the powers they exercise so that flexible responses can be made by the locally elected representatives. As noted above, this would include the municipal/districts being given all the powers of a natural person as well as being able to legislate within certain specific areas.

In general, we believe that responsibility for the delivery of services should be available to the municipal/districts to perform. As the level of development between municipal/districts will vary greatly, it is our suggestion that there be some flexibility built into the system. We propose that there be a base list of powers available to municipal/district governments and another expanded list of powers which they could exercise if they have the resources and the will. The base list of powers should approximate the authority currently exercised by tax based municipalities. The territorial government would exercise those powers available to municipal/district governments but not exercised by them. We have not had the time nor the resources to explore what exact powers should be on the base list and what should be on the expanded list. The following is a list of some of the powers which we believe a municipal/district government should be able to exercise. We have not reached a final determination as to the full scope of the extended list of powers.

In our view, a degree of asymmetry may be an inevitable consequence of establishing municipal/districts in the manner we propose. Clearly there will be asymmetry when different



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municipal/districts exercise different powers. The Bourque Commission recommended that the principle of asymmetry with an unequal distribution of powers be recognized as acceptable among district governments. We agree. Certainly, if there are units of aboriginal self-government established with certain powers that go beyond those exercised by the municipal/districts or indeed even the territorial level of government in the new constitution, there will be additional asymmetrical relationships. We recognize, however, that it is difficult in the abstract to speak of how the different orders of government would inter-relate.

Specific matters that the sub-territorial units should have responsibilities for would be the following:

- ▶ Control over land-use planning;

This refers to the power to control the development of land within a municipal/district including control over zoning, development, subdivision and other related matters.

- ▶ Regulation of public places and assemblies;

Regulation of activities in parks and other public places, permits for parades, exhibitions, shows, and events, regulation of billboards, etc.

- ▶ Highways, streets, and transportation systems;

This will allow for the establishment and maintenance of roadways and transportation systems within the municipal/district. This would not extend to such matters as establishing "rules of the road", which would be a territorial responsibility.

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- ▶ **Provision of Safety Services and the protection of persons and property and the regulation of nuisances;**

This will allow for the establishment of fire or police services. It could also refer to requirements for clearing sidewalks, could be authority for maintaining drainage ditches and for weed and mosquito control.

- ▶ **Municipal utilities and infrastructure;**

This would allow municipalities to establish utilities for water, electricity, gas and other systems the municipal/district might desire to operate as a utility.

- ▶ **Regulation of business and business activities;**

This could allow for the licensing and regulating of businesses including the setting of hours for business.

- ▶ **Specified taxation powers;**

This will be discussed in the next section of the paper.

- ▶ **Delivery of cultural and recreational services;**

This would allow a municipal/district to regulate and provide for athletic activities and cultural activities.

- ▶ **Regulation of wild and domestic animals;**

This would allow for by-laws restricting the number of animals someone may have within a municipal/district or prohibit such things as dogs running at large. It would also allow for prohibition on certain types of animals in the municipal district.

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- ▶ The enforcement of laws made by the municipal/district;

Essentially, this is to allow for prosecution of offenses arising from violations of municipal/district by-laws.

- ▶ The good government of the municipal/district;

This power could be a general power that would allow for municipal/districts to undertake matters essential to the proper functioning of the government and the powers granted to it.

- ▶ Matters of a purely local concern.

This would act as a limited residual clause encompassing matters which are not specifically mentioned but which are of a local concern.

### **3. Shared Responsibilities**

Some of the above-noted responsibilities for the municipal/district government would have to be done in concert with the territorial government. For instance, while regulation of business and business activities is a power that the municipal/district government should exercise, it should not be done to the exclusion of business development activities by the territorial government. Similarly, while municipal/district government could regulate transportation systems this should not be done at the exclusion of territorial involvement in funding road projects and matters of territorial concern. Areas such as these are areas where both the territorial government and municipal/districts would have legitimate areas of concern and legislative authority. Such hybrid areas need to be examined further to better delineate the

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scope of authority for each level of government. We see this as a topic of future discussions in the current process of developing a new constitution.

With respect to providing services, while the municipal/district governments may undertake to provide certain services it should not, once again, be done at the exclusion of territorial involvement either through financial support or in some instances through the setting of standards. Other matters that we would like to see arising from consultation and collaboration between the two levels of government would be:

- ▶ Environmental control;
- ▶ Liquor distribution and regulation;
- ▶ Training and upgrading (manpower) programs;
- ▶ Creation and delivery of public housing;
- ▶ Management and administration of lands and water;
- ▶ Management responsibility of renewable and non-renewable resources;

The allotment of powers and responsibilities must not, however, occur in a vacuum. The very real consideration that governments must address is how the services they provide and the responsibilities they undertake are to be funded. It is this issue that we address next.

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**4. Taxation and Revenue Generation**

There can be little doubt that the revenue sources available at present in the Northwest Territories are inadequate to meet the responsibilities and obligations of government. Accordingly, we must rely upon federal grants. In a sense, however, our position is no different from that of most provinces. We note the commitment contained section 36(2) of the Constitution Act, 1982 which states:

"Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."

In our view, a similar but perhaps more directly worded commitment would be required in the New Western Territory constitution. There should be an explicit commitment to funding by the federal government in recognition of its obligation to northern peoples. While the federal Crown has a special fiduciary relationship with Northern Aboriginal peoples, as has been identified by the courts, it is our view that the federal government has a special if not fiduciary relationship with all Northerners. Presumably, the fact that there has been a Minister responsible for Northern Affairs is a recognition of this special relationship.

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With respect to the territorial government, it should have access to at least all the taxing abilities of a province. We have already noted, that the territorial government should have full access to revenue from natural resource development.

On the issue of provincial jurisdiction over taxation we recognize that section 16(a) of the Northwest Territories Act limits the Commissioner in Council to:

"direct taxation within the Territories in order to raise revenue for territorial, municipal, or local purposes".

A mirror provision is found in section 92(2) of the Constitution Act, 1867 which assigns to the provinces jurisdiction over: direct taxation within the Province to raise revenue for Provincial purposes.

We recognize that much litigation has occurred over the years in determining what constitutes a direct versus an indirect tax. The distinction is somewhat archaic but is still an active part of our Constitution. The classic definition was given by John Stuart Mill who, as stated by Professor Hogg in his work Constitutional Law in Canada, was <sup>6</sup>:

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<sup>6</sup> Hogg, Peter, Constitutional Law in Canada, (3rd Edition), (Carswell 1992), p. 740.



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"A direct tax is one which is demanded from the very person who it is intended or desired should pay it. Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another."

In other words, if the person against whom the tax is levied pays it, then it is direct. If the person or entity against whom the tax is levied can pass it along then it is an indirect tax.

While we recognize the classic form of indirect tax would be customs and excise duties, there have been arguments raised about the indirectness of various business tax and licence schemes.

In our view, the restriction on direct taxes should simply be removed from the constitution of the New Western Territory. As a territory we are not bound by the restrictions placed on provincial powers under section 92 of the Constitution Act, 1867. The powers which the territorial government can exercise are those which the federal Parliament delegates to the territorial government. As indirect taxation is clearly within the jurisdiction of Parliament then, in our view, it can be delegated to the territorial legislature. The advantage of not being restricted by the direct tax requirement would be that the taxes imposed by the territorial government would not be limited by the indirect tax restriction.

In our view, certain tax sources should be open to the municipal/districts. These would include property taxes, business taxes and licences, various permit fees for the operation of any

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business or service within the unit, liquor taxes, and perhaps revenues from the sale of pelts, furs, or other livestock.

It will be necessary to have agreements with the territorial government on the form of revenue sharing. It is conceivable that agreements could be required with the territorial government to share some territorial tax revenues. We would suggest, for example, that there may be a requirement to share natural resource revenue with the municipal/districts.

Clearly, revenue-sharing between the territorial government and the municipal/district government would be a necessity. The municipal/district governments could not function without such funding. In our view, there should be some requirement brought into the constitution to ensure that revenue sharing continues to be a reality and a requirement of the territorial government. There must be a goodwill commitment and a constitutional mechanism for the territorial government to provide adequate levels of funding for municipal/districts.

#### **IV ABORIGINAL SELF-GOVERNMENT**

The Aboriginal peoples of the New Western Territory have a special relationship with the land and resources of the North. Their rights as Aboriginal persons are affirmed and protected by

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the common law, by agreement either through the older Treaties or recent land claim agreements, and by the Constitution Act, 1982.

We wish to make it expressly clear that we support the affirmation of existing Aboriginal rights, whatever the source of those rights might be, and support any additional rights that may be recognized or affirmed by legislation, treaties or constitutional amendment.

While nothing in the New Western Territory constitution should be susceptible to an interpretation lessening or abridging Aboriginal rights, we have some concerns about whether the constitution should attempt to be the forum in which aboriginal rights to self-government are addressed. Should this be the forum for creating Aboriginal rights? Certainly the existing rights of the Aboriginal peoples, whatever the source, or any rights that may accrue to the Aboriginal peoples, should be affirmed in the New Western Territory constitution.

We believe that it is fair to state that there is much uncertainty surrounding the Aboriginal right to self-government. As demonstrated during the talks leading up to the Charlottetown Accord, there was some debate as to whether there is an inherent right to self-government. We further note that different Aboriginal peoples may choose to exercise any self-government rights in different ways. It is conceivable that the Inuvialuit may chose to structure a self-government agreement differently from the Gwich'in or from the Sahtu.

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In the Bourque Commission report there is a considerable discussion of Aboriginal self-government. We note that at the time that the report was prepared the federal government had made recommendations with respect to Aboriginal self-government as part of the constitutional amendment process. The Charlottetown Accord contained many provisions addressing the issue of Aboriginal self-government. Had the Accord been passed then the path for Aboriginal self-government would have been much clearer. The reality of the situation is, however, that for whatever reason the Charlottetown Accord was not approved by a majority of Canadians. We can share the frustration of the Aboriginal peoples with respect to the slow progress on Aboriginal self-government. The preliminary question to ask is to what extent the constitution should address the issue of Aboriginal self-government. In our view, the issue of Aboriginal self-government should be left to the individual Aboriginal peoples to be decided in the forum they so chose. Furthermore, it may be presumptuous for all Northerners to have a say in the creation of an Aboriginal government. The Aboriginal people should create whatever framework for government they can.

In our view, decisions on Aboriginal self-government will be properly made in other forums. While we support the recognition of Aboriginal rights in a New Western Territory Constitution, we have serious reservations about addressing the subject of Aboriginal self-government. It is conceivable that such discussions would be beyond the jurisdiction or reach

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of the Territorial government in any event. Further, it is conceivable that Parliament may not want to address the subject in the context of the New Western Territory constitution.

The exciting challenge arises as to how Aboriginal governments and non-Aboriginal governments would operate in the New Western Territory. The Bourque Commission proposed a district form of government. In our proposal we have recommended a municipal/district form of government. The municipal/district governments will co-exist with the Northern Aboriginal groups and bands. We believe it is essential to allow sufficient flexibility for municipal/district governments to make agreements with bands, tribal councils, First Nations and other land-based Aboriginal groups for the joint provision of services. Further, the municipal/district governments should be able to accommodate the aspirations of aboriginal Northerners if that is the alternative desired by an aboriginal people.

We note that many of the powers which the Bourque Commission suggests would be available to the district order of government correspond to the powers that could be addressed in a federal-territorial-First Nations agreement on self-government. In this respect we refer to the draft Yukon First Nation Model Self-government Agreement of November 1991. It is an interesting proposition that the powers available to a First Nation pursuant to a self-government agreement would be approximately the same as the powers it would enjoy as a district order of government under the Bourque Commission proposal.



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We wish to emphasize that none of the foregoing should be interpreted as a denial of any rights to Aboriginal self-government. Our point is that the Bourque Commission report ascribes too many responsibilities to districts in trying to accommodate anticipated forms of Aboriginal self-government with the second level of government for the New Western Territory.

In our view, the Bourque Commission attempted to create a system of government that could form the basis for Aboriginal self-government. The powers and the degree of sovereignty, if indeed sovereignty can be viewed in relative terms, is not appropriate for municipal/district governments. Aboriginal self-government, as we have stated above, should be negotiated in a different forum. The municipal/district governments will co-exist with the Aboriginal governments. A matter for discussion will be whether the Aboriginal governments wish to adopt the municipal/district structure of government. It is conceivable that a municipal/district could correspond to the geographic boundaries of a First Nation if the First Nation so agreed. It could then exercise the powers of a municipal/district. Although we are not advocating that the new constitution should be a proxy for aboriginal self-government, it is extremely important that the constitution provide a mechanism that can accommodate and satisfy all northerners.



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**V RIGHTS**

As stated in the overview, one of the primary purposes of a constitution could be to outline the relations between the state and citizens. In the court case of Re Allman and The Commissioner of the Northwest Territories<sup>7</sup> a northern justice, Mr. Justice de Weerdts quoted from Walter Tarnoplosky's book The Canadian Bill of Rights. The quotation from Tarnoplosky's book reads as follows:

"In discussing basic or fundamental rights and freedoms one is concerned with the relation between the individual or a group and the state. In its simplest form this relationship may be thought of in two ways. It may be that an individual or a group demands non-interference from the state, at least in certain activities. This is a claim for freedom or liberty. It may be, however, that the demand is for state intervention to protect one's way of life against encroachment by others, or to provide it either as a minimum living standard or on the basis of equality with others: this is a claim for positive assistance of the state in the securing of certain rights."

Justice de Weerdts points out in his decision that while the above passage expresses Tarnoplosky's thesis, it also provides an indication of what relationship rights and freedoms have in asserting the rights of individuals or groups against the state.

In Canada the most extensive and authoritative statement of rights is found in the Canadian Charter of Rights and Freedoms ("the Charter"). Of course, the Charter applies to the

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<sup>7</sup>(1983) 144 D.L.R. (3d) 467 at p. 478

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Northwest Territories by the operation of sections 30 and 32(1) of the Charter. We believe that as the Charter is the supreme law of Canada there should be a recognition in the New Western Territory constitution either affirming the supremacy of the Charter or repeating some of the major sections of the Charter.

We also wish to reiterate our comment from the overview that a constitution does not supplant the need for other legislation. For instance, as will be discussed below a human rights law should be enacted but does not need to form part of the New Western Territory constitution.

**1. Voting Rights**

Perhaps because the AWTBM is an association of municipal governments, we are very much attuned to the issue of voting rights. We believe that it is important to affirm the rights of all residents of the New Western Territory to vote in elections. Although the right to vote in territorial elections is probably protected by section 3 of the Charter of Rights, we wish to provide some certainty for the right in municipal/district elections. Section 3 of the Charter states:

"Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein."

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In our view, this section applies to the Northwest Territories although there is not a specific reference to the territories. Notwithstanding this absence of a reference to territories or provinces, the Yukon Court of Appeal considered the impact of section 3 on the 12 month residency requirement of the Yukon's Election Act in Reference re Yukon Election Residency Requirements<sup>8</sup>. This case held that the residency requirements were not in conflict of the rights in section 3 of the Charter.

Courts have, however, consistently held that the protection afforded in section 3 of the Charter does not apply to municipal elections. For instance, the Ontario Court of Appeal in its decisions in Jones v. Ontario and Rheaume v. Ontario<sup>9</sup> clearly stated that the rights of citizens "to vote or to be qualified for membership in the House of Commons or in a legislative assembly, does not apply to municipal councils." Similar court decisions have been reached in Alberta and British Columbia. We believe that it is important to assert a right of residents to vote and to run for any elected office in the New Western Territory, subject only to reasonable limitations (e.g. age requirements and residency requirements). Although some might argue that Charter protection would exist for territorial electors or municipal/district elections we want to ensure that the right is asserted in the New Western Territory constitution.

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<sup>8</sup>[1986] 4 W.W.R. 79 (Yukon C.A.)

<sup>9</sup>(1992) 7 O.R. (3d) 22

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**2. Equality Rights**

While it may be enough to affirm the principles in the Charter of Rights, or to have separate legislation dealing with non-discrimination, it is our view that there should be some mention either in a separate section or in a preamble as to equality rights. We are of the view that all residents should have equal access to their governments and the right to equal treatment by government subject only, once again, to reasonable limitations. This means, for example that all persons within a municipal/district should be entitled to vote and run for election.

**3. Aboriginal Rights**

As indicated above, there should be a recognition in the constitution of existing Aboriginal rights and those rights which may be obtained by the Aboriginal peoples similar to the assertion found in section 35 of the Constitution Act, 1982. Given that Aboriginal rights can be interpreted as being drawn from many sources (e.g. treaties, statutes, constitutional documents, the common law, and inherent Aboriginal rights) and that these rights may differ as between Aboriginal peoples (e.g. different treaties), it would be our recommendation that the constitution not attempt to contain or be a compendium of Aboriginal rights. The rights of the Aboriginal peoples have been, are now, and will be in the future, determined in other forums. Aboriginal rights could be recognized by virtue of a general statement recognizing existing or future rights in the New Western Territory constitution.

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**4. Human Rights**

While we advocate the inclusion of democratic rights in the constitution that is not to say we envision those rights as the only ones worthy of protection. In our view many of the rights or provisions dealing with non-discrimination such as prohibiting discrimination based on age, gender, colour, nationality, ethnic origin, or marital status could be placed in a separate piece or pieces of legislation. That legislation would not need to be in the New Western Territory constitution.

We note that the Northwest Territories does not at present have a Bill of Rights or Human Rights Code. In its discussion of human rights, the Bourque Commission recommended that the government of the Northwest Territory:

"consider the development and enactment of a Human Rights Code prior to the coming into force of the New Western Territory constitution".

The purpose of having a Human Rights Code is to regulate the interactions between private individuals. Such matters are not covered by the Charter which only relates to actions by government. The Charter does not, for example, regulate actions between individuals such as landlords and tenants. In our view, there is a need for legislation by either the Northwest Territories or the New Western Territory ensuring that specified types of discrimination will not be allowed in private sector dealings. Legislation of this type has been enacted by the



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provinces to protect persons from types of discrimination which are deemed unacceptable in a free and democratic society.

We agree with the Bourque Commission that a Human Rights Code should not wait until after the passage of the New Western Territory constitution. At the latest it should be passed concurrently with our new constitution. In our view there should be an opportunity to get the comments of the public on what should be included. However, notwithstanding that ordinary legislation could resolve some of the human rights issues, we believe that there is a need to assert certain rights either in a preamble or in a specific rights section in the New Western Territory constitution.

## **VI SOCIAL CHARTER**

The Bourque Commission recommended that a social charter be introduced with a statement of social principles. It was proposed that the social charter should identify the basic necessities required for "the spiritual, emotional, mental, physical, and economic well-being of all members of a New Western Territory society". The Commission initially was of the view that the provision should be enforceable in the Courts. Ultimately, they recommended that the issue of enforceability of the Social Charter be revisited in Phase II of the constitutional development process.



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The social charter was divided into two sections by the Bourque Commission. One was a statement of social principles and the second was a statement of the responsibilities of government in ensuring that residents have access to certain services.

With respect to the first part, the statement of social principles, it may be the case that such principles could be incorporated into a general preamble. We have some concerns about incorporating these points as substantive constitutional sections as while they are admirable points, they may be too general to make them justiciable. In our view, they are guidelines that all legislators should be aware of but perhaps should not be made part of a constitutional document.

With respect to the responsibility of government, we note that similar commitments of government were contained in the Social Charter found as part of the Charlottetown Accord. That Social Charter was to be non-justiciable although there was some discussion as to whether a provision of a constitutional document could ever be "non-justiciable". Ultimately, of course, the Charlottetown Accord was defeated and the Social Charter withered along with it.

We note that at the time the Bourque Commission was preparing its report, the NDP government in Ontario released a document entitled "A Canadian Social Charter: Making Our Shared Views Stronger" in September 1991. In the period since the Bourque Commission

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reported, it is our view that Canadians have an enhanced sense of the cost of government to our society. The continual attention devoted to deficit reduction has, in some sense, led to a re-orientation by Canadians and governments as to the services that government is able to or should be able to provide in society. Simply put, there is public recognition that we may no longer be able to afford some of the policies and programs that have been put in place.

While the responsibilities listed by the Bourque Commission comprise goals that governments should strive for in providing services to people, the requirement should not be part of a constitution in our view. The best way to ensure that governments provide services and programs that meet the needs and demands of residents is by the democratic process which involves regular communications with elected members. Accordingly, our preference is for a constitution that does not include a section on what entitlements governments must provide to people as is currently is proposed in the Social Charter. Government policy should reflect those needs and demands. None of our comments on the Social Charter should be taken and derogating from our recommendation for a Human Rights Code.

## **VII AMENDMENTS TO THE CONSTITUTION**

A principle that must be recognized in the constitution is that amendments to it can only be made after consultation with the people of the New Western Territory. The Bourque

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Commission's Draft Bill, Part V, sections 36-38, stipulated that the legislature of the New Western Territory could exclusively make laws amending the constitution but that amendments relating to the district governments had to be authorized by two thirds of the districts having at least 50 percent of the population and by resolution of the Legislative Assembly. Under section 38 of the proposed Bill, amendments could not be made until Aboriginal First Nations had consented.

Leaving aside, for the moment, the question of whether this is to be a federal statute in which case Parliament would have to make the amendments to the New Western Territory constitution, we are of the view that in legal terms the proposed sections 36 and 37 are agreeable. There should, however, be a provision for consultation with the residents of the New Western Territory and for a referendum before there is any amendment to the constitution. If the matter affects the Aboriginal peoples directly then the First Nations should perhaps have a special role in approving the amendment. However, we believe that as First Nations may become district governments and that a referendum of all residents of the New Western Territory would be required prior to any amendments, the democratic interests of the people would be adequately safeguarded. In general, we are of the view the referendum would generally be required for amendments to the New Western Territory constitution.

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As indicated elsewhere in this discussion paper, the creation of new municipal/districts and the alterations of municipal/district boundaries should not require a territory-wide referendum.

**VIII NAME**

It is our view that the name for the New Western Territory should be left to the people. Whatever the majority wish as a name then it should be adopted. As stated at the outset, we have used the term New Western Territory throughout this discussion paper but its usage should not be viewed as a preference. Indeed, people may wish to consider the name Northwest Territory. It has historical roots and is globally recognized.

**IX HEAD OF GOVERNMENT**

An issue raised in the Bourque Commission report was whether there should be a Commissioner. Of course, without being a province the territory cannot have a Lieutenant Governor who is the Head of State of a province. People may question the need for a Commissioner or chief executive officer at all given that his or her purpose is to represent the federal government. In principle, however, we have no objection to a federal presence. This issue will require discussions among the stakeholders and the people before it can be resolved.

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**X JUDICIARY**

We have serious reservations about establishing separate judicial regimes for each municipal/district. In our view, the territorial government can establish a court system for the entire territory. If the present system were continued then the Federal Cabinet would appoint judges to the NWT Supreme Court while the territorial government would appoint judges to the Territorial Court. In our view, this is the most economical and rational means for a justice system.

It is not our understanding that most Aboriginal groups are advocating a totally different system of justice at this time. With respect to municipal/district governments, there are laws that can be passed but would simply be enforced by the court system as established by the territorial government.

**X1 CONCLUSION**

As indicated at the outset of the paper, it is our view that the proposals contained in this discussion paper must be reviewed by the public and their responses and comments obtained before we can adopt a firm position on what should be in a new constitution. The proposals that are contained in this discussion paper accord, in our view, with the aims that were



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established at the beginning of this paper for constitutional reform. In general, we are of the view that the Territorial Government should possess province like powers. There is a need for another level of government in the New Western Territory in order to represent the interests of the people and serve their needs. Given the great diversity in the New Western Territory, we are of the opinion that this second level of government should essentially be "quasi-sovereign". It would be established in the constitution as a municipal/district level of government. The powers which this level of government would exercise would be somewhat flexible depending upon the level of development of the particular municipal/district.

Underlying this entire process is the uncertainty which exists concerning aboriginal self-government. As indicated throughout the discussion paper, the aboriginal peoples must be allowed to establish their own forms of self-government through whatever forums they deem most appropriate. When those forms of government are established or whether they continue as existing band governments, we hope that the commonality of interest that will exist will allow for joint agreements for the provision of services and whatever matters municipal/districts and aboriginal forms of government can agree upon.

While the Bourque Commission devoted much attention to rights, we have addressed most of our attention to the issue of the structure of government. In our view, many of the issues associated with rights can be addressed in individual pieces of legislation. For example, this



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approach would permit more practical penalties and redress for discrimination in the private sector.

In our Interim Discussion Paper, a summary was attached as part of the Interim Discussion Paper. That summary, with appropriate modifications to reflect this Discussion Paper, is attached as an Appendix. However, we would also like to emphasize that major conclusions and positions being put forward by the AWTBM which are as follows:

1. The new constitution should provide for two levels of government: a strong territorial government and a quasi-sovereign municipal/district level of government.
2. All municipal/districts would exercise certain base powers and have the right to exercise further extended powers as determined by the individual municipal/districts.
3. There should be some overlapping areas of authority granted to the territorial government and the municipal/districts.

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4. All residents of the New Western Territory should be eligible to vote and run for any elected office in the New Western Territory subject only to reasonable limitations such as age and residency.
5. The territorial government should have access to all forms of taxation. Consideration should be given to expanding the taxation powers of municipal/districts. At a minimum, there should be a mechanism in the constitution for revenue sharing or other means to assure adequate levels of funding for municipal/districts.
6. A human rights code should be adopted for the New Western Territory prior to or concurrent with the adoption of the new constitution.
7. The new constitution should give recognition to the supremacy of the Charter of Rights and Freedoms.
8. The new constitution should recognize and affirm all existing rights of the aboriginal peoples, whatever the source or any rights that may accrue to them. The issue of aboriginal self-government should be left to the individual aboriginal peoples to decide in the forum they choose.

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9. The adoption of the new constitution should be subject to a referendum approving it. Any amendments to the constitution should also be subject to approval by referendum. The creation of new municipal/districts or the adjustment of boundaries of existing municipal/districts should require a referendum only within the area affected.

We invite comment on the proposals contained in this discussion paper. We recognize that a constitution must be developed in conjunction with the people on whose behalf it is designed. We are committed to working with all the peoples of the New Western Territory in this significant task.



## APPENDIX "A"

- ▶ Development of a constitution must be done in consultation with the people of the New Western Territory
- ▶ There will be public consultations held by the AWTBM members prior to the April, 1994 constitutional conference
- ▶ There should be a commitment from the federal government to participate in the process of constitutional reform so that they become stakeholders on the process
- ▶ The adoption of a constitution for the New Western Territory would not mean attaining provincial status at this time
- ▶ In preparing a constitution participants must take into account the financial resources available to governments to discharge the responsibilities. There should be not more orders or levels of government than the residents of the New Western Territory need or can afford.
- ▶ There should be a territorial order of government which would exercise many province-like powers
- ▶ There should be a second level of government created in the New Western Territory constitution. This level we have referred to as a "municipal/district government" and would replace existing municipal governments.
- ▶ Current cities, towns, villages and hamlets would become municipal/districts.
- ▶ Alterations of boundaries or the creation of new municipal/districts would be done by Order-in-Council. Such amendments to the constitution would not require a vote of all residents of the New Western Territory but would require the consent of the municipal/districts involved.
- ▶ A municipal council structure would be adequate for municipal/districts. There would not be full legislatures in every municipal/district. They would adopt legislation by by-law.
- ▶ The territorial government would not be able to take away powers from a municipal/district but the municipal/district government could choose to not to exercise certain powers which would be then performed by the territorial government.
- ▶ There would be certain "base" powers that municipal/districts would exercise. There would be a list of additional responsibilities that they may choose to exercise.
- ▶ There would be certain shared responsibilities between the territorial government and the municipal/districts.

- ▶ There should be a recognition in the New Western Territory constitution of the obligation of the federal government to provide funding to the New Western Territory
- ▶ The territorial government should have access to all forms of taxation.
- ▶ Taxation in the New Western Territory should be not restricted to direct taxation.
- ▶ Certain tax sources should be open to the municipal/districts which could include property taxes, business taxes and licences, various permit fees, liquor taxes and perhaps revenues from the sale of pelts, furs or other livestock.
- ▶ The territorial government should have access to resource revenues.
- ▶ There should be a requirement to share those resource revenues with municipal/districts.
- ▶ There should be recognition in the New Western Territory constitution either affirming the supremacy of the Charter or repeating some of the major sections of the Charter.
- ▶ There should be legislation passed either before or at the same time as the adoption of the New Western Territory constitution establishing a human rights code for the New Western Territory to regulate and prohibit discrimination in the private sector.
- ▶ All residents of the New Western Territory should be eligible to vote and to run for any elected office in the New Western Territory subject only to reasonable limitations such as age and residency.
- ▶ The New Western Territory constitution should recognize and affirm all existing rights of the aboriginal peoples, whatever the source or any rights that may accrue to them.
- ▶ The issue of aboriginal self-government should be left to the individual aboriginal peoples to decide in the forum they so-choose.
- ▶ The establishment of a New Western Territory constitution does not seem to be the most appropriate form for establishing aboriginal self-government given the interest of the individual aboriginal peoples and that the discussions may be beyond the jurisdiction or reach of the territorial government in any event.
- ▶ A municipal/district could correspond to the geographic boundaries of a first nation if the first nation so agreed. It could then exercise the powers of the municipal/district.
- ▶ On equality rights it may be enough to affirm the principles found in the Charter of Rights or to have separate legislation dealing with non-discrimination. We support the principle that all residents should have equal access to their governments and the right to equal treatment by government subject only to reasonable limitations.



- ▶ Amendments to the New Western Territory constitution should require a referendum.
- ▶ The name of the New Western Territory should be left to the people to decide.
- ▶ With respect to the head of government, we have no objection to a federal presence as is the case with a Commissioner. This issue will require discussions amongst stakeholders and the people before it can be resolved.
- ▶ We do not believe that each municipal/district should have its own judicial system. The territorial government can establish a court system for the entire territory. The federal cabinet would continue to appoint judges to the Supreme Court while the territorial government would appoint judges to the Territorial Court.



**NORTHERN WOMEN SPEAK:  
A VISION FOR A NEW WESTERN TERRITORY**

Submitted jointly by:

The Native Women's Association of the NWT and  
The Status of Women Council of the NWT

to

The Constitutional Development Steering Committee

Prepared by: Winnie Fraser-Mackay  
Researcher Consultant



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*"Constitution-making is like no other political or legal act; it is the process of self-definition and self-realization. We must reflect upon who we are and be able to articulate what we are. We then must engage each other in debate over our values and beliefs which we believe to be fundamental. We must reach consensus on those values and beliefs which we expect to see entrenched in the constitution as a statement for the present and the future."*

Marge Friedel, "Conversations Among Friends," in  
Women of the Metis Nation: 1992, Centre for  
Constitutional Studies



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An outline of recommendations for participatory models of government based on research and input from northern women throughout the NWT as presented in workshops, forums and individual interviews.

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## FOREWORD: WHY WE WROTE THIS REPORT

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In May of 1993, the NWT Native Women's Association and the Status of Women Council of the NWT received special research monies from the territorial government. The government, together with groups like ours, is working on a constitution for the new western territory when Nunavut is created in 1999.

The government asked us to find out what barriers stand in the way of more northern women becoming political leaders. We treated this project as an exciting opportunity.

We looked at what jobs women did in traditional native cultures. We looked at what women's lives are like today, and we also looked at the needs of both native and non-native women in modern northern society.

But we also thought about northern society as a whole.

How can we make sure every northerner-- male and female, young and old, native and non-native-- has the chance to take part in our society? How can we make sure all northerners feel their interests are heard and your rights are being protected by government?

How do we make sure that aboriginal peoples' collective right to govern themselves is recognized? At the same time, how do we make sure the rights of individuals, especially women, are protected?

We heard, and put into this report, many things women say they don't like about the present form of government. We also heard, and put into this report, women's stories about social problems and injustices.

But we also asked ourselves, and the women we talked to, "How should things be, then? How do we tackle the problems, together, in a positive way?"

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This meant asking not only about rights, but about responsibilities. What rights should all people have? What special rights do some people need, to make up for handicaps or unfair treatment? What responsibilities should every citizen have, whether as a leader, or as a member of a community?

A constitution, or supreme law, for a new western territory, is the basis for rights for all the people who live there. Do we all want to live together, in the same territory, with one government?

If so, what are our common values and hopes? What chances in life do we want all our children to have? What help will we give to people who are poor, old, isolated, sick or abused? As women, we say yes, we do want to live together. We don't want to see our homes and communities cut off from one another, or our families broken up.

Our two groups worked together to think up new kinds of government that would do a better job for all the people in the Western Arctic.

We may each have different views, opinions and needs, but working together is the way women achieve success. In this we have our elders' laws to guide us: caring, sharing, trust and respect are the foundation of all our ideas.



## INTRODUCTION: HOW WE WROTE THIS REPORT

In order to write this report, we had to do research.

We poured over the numbers on social and economic condition for women. We read about traditional forms of native government in both the North and the South. We checked out studies on constitutional development in the north nationally, including the work of the Bourque Commission and the Western Constitutional Forum. We looked up what northern women had said to us before, when we asked them about constitutional development and justice.

We also interviewed women in several NWT communities, both privately and in groups. Members of the Native Women's Association of the NWT talked about theme of "Partners in Leadership" at their Annual General Assembly in Arctic Red River last July. Researchers held workshops with representatives of both the Status of Women Council and the Native Women's Association.

By the end of August, 1993, we came up with the proposals in Catherine MacQuarrie's interim report, "Participatory Models of Government for NWT Women."

We needed to know what northern women thought of these ideas now. The northern political scene is constantly changing, and women's views change with it.

So workshop leaders, Winnie Fraser-Mackay and Aline LaFlamme took our proposals to community women in the Spring of 1993 to early January 1994.

"Focus groups" took place in Fort Smith, Hay River, Fort Simpson, Rae-Edzo, Inuvik and Yellowknife. But women from smaller communities also took part. As many as 25 or 30 women attended each workshop. The workshops involved native women, non-aboriginal women, including immigrant women and women of colour, business and professional women and homemakers.

The workshops not only gave us feedback, they got women talking to each other about constitutional issues and cultural rights. Sometimes they argued with each other or the workshop leaders. We think this is a sign that political debate is alive and well among northern women.

But we must stress again that there has not been enough time to research this report as well as we would like. We have tried to talk to a wide range of women in different communities. But we are not satisfied that enough women had the chance to express their views in this report.

### **HISTORY OF WOMEN IN CANADIAN POLITICS**

At whatever level your interest lies as a Canadian woman, you have something to contribute to the political fabric of this country.

Even before men of property were permitted to vote, and long before native persons were even considered to be part of the electorate, women were active on the political scene of Canada, marching and campaigning against alcohol abuse, child labour, prostitution and slavery. Because women have traditionally seen themselves as caregivers, they have always been concerned with the social fabric of society. The areas of health, social services, culture, etc. have long been seen as "suitable" political pursuits for women.

More than any other group of people, women have been discriminated against in regards to the right to vote. Native persons or immigrant persons have been doubly discriminated against if they are women. Persons living on Indian Reservations did not review the vote until 1960; Inuit persons were enfranchised in 1962. While Native men not governed by the Indian Act could vote from the passing of the Franchise Act of 1898, Native women and non-Native women could not. However, non-status Native women and non-Native women had to pay taxes at the same rate as men whether they voted or not. It was not until 1940 in Quebec and 1948 in Newfoundland that women got the vote. The right to run for office did not always go along with the right to vote. For instance, although women in New



Brunswick were given the right to vote in 1922, they could not hold elected office until 1934.

A classic example of the discrimination faced by women was the "men of right to race and property" bill passed in 1885. This legislation gave the vote to white men of property or white men married to a woman of property regardless of her race. The woman was required to pay the taxes on her property while her husband went to vote.

Another more recently raised issue which is just as blatantly discriminatory is the loss of status for Native women and their children when the woman marries a non-status individual. Although it is not a direct franchise issue, it should be mentioned that it was not until 1929 that Canadian women were deemed as slaves. Men of all races have always been considered men unless they were slaves. Slavery was never widely practised in Canada and was never sanctioned by the Canadian government.

It was not until 1955 that married women were permitted to work for the public service and not until 1974 that women could become RCMP officers. In 1977, legislation was passed allowing the split of the Canada pension plan credits upon dissolution of marriage and 1978, it became illegal to fire a woman for being pregnant. It was not until 1982 that a woman was appointed to the Supreme Court and not until 1983 that sexual harassment in the workplace became illegal. I have recorded this information in order to illustrate how recently more of our rights have been acquired.

On March 8, 1908, the first International Women's Day Celebration took place in the United States. At about this time, women's enfranchisement became a high profile issue. This is because the Enfranchisement Act of 1898 had given all men, whether they had property or not, the right to vote. Women were working outside the home in the cities in increasing numbers in sweat shops and factories for low wages. Farm women were expected to work like men, raise the children, keep the house and keep their mouths shut. In particular, poor women began to be increasingly discontent with the lack of opportunity for themselves and their children.

Women like Nellie McClung, Agnes MacPhail and Mary Ellen Smith began travelling through the country, encouraging women to demand the franchise. Women who demonstrated were often jailed, harassed and had threats made against them and their families. Men sometimes lost their jobs and their friends if they could not keep their wives in line.

John Dryden, Ontario Minister of Agriculture at the turn of the century, campaigned hard against the vote for women as did many other male politicians. They often got men's votes by promising to keep women in the kitchen and at the stove and away from the ballot box. Mr. Dryden's wife was well known for her Bible thumping speeches on how votes for women would cause the ruin of the family and a general decline in societal morale. Many prominent men's wives were pressed into service to convince women that wanting the vote was unfeminine, immoral and unchristian.

Slogans like "the hand that rocks the cradle, rules the world" were used to convince women that they already had power without the vote. Thank goodness they did not buy this hogwash. At this time in history, women and Native people were being told the same falsehoods. "The government and the church know what's best for you, just do as you're told, don't try to think for yourself and all will be well, God wants it that way".

Women have had to fight tooth and claw for the last hundred years to gain the right which should have been theirs by virtue of being human. Patriarchy has affected every aspect of women's lives, where we work and for how much, how we procreate, and what we can and cannot do with our own bodies.

In spite of this, women have been responsible for most of the major advances of social progress in our society. Women campaigned for liquor control laws, homes for unwed mothers, child labour laws, humane working hours and conditions, universal education, and health care.

There is probably no other jurisdiction in Canada where women's struggle has been more prolonged and arduous than in the Northwest Territories. It was not until 1970 that a woman, Lena Pederson, was elected to the Territorial Council

Legislative Assembly. Federally, the first woman candidates appeared in 1984 - Rhoda Innuksuk (NDP Eastern Arctic), Lynda Sorenson (Liberal Western Arctic) and Bertha Allen (NDP Western Arctic), who was also the first President of the NWT Advisory Council on the Status of Women. None of these women were elected. Finally in 1988, Ethel Blondin, running on a Liberal ticket, was elected as the first woman and the first Native person to represent the Western Arctic in the House of Commons.

Women are still only 13% of a 295-member Federal parliament and only 5 women have ever been elected to the Legislative Assembly of the NWT. Even in these small numbers, women's influence has continued to humanize society.

In municipal politics and on Band Councils, women continue to face an uphill climb. Although women are often the ones who are most in touch with the needs of the community, the Band Councils and Settlement Councils continue to be dominated by men.

### THE BARRIERS FOR WOMEN IN POLITICS

There are many barriers to women in politics in the north today. **Family duties** and **lack of money** are common problems. **Culture and language, distance from communities** and **lack of education** are also barriers, and many women don't like the fighting and bickering that goes on in the top levels of federal and territorial politics.

Lots of women are politically active in local politics or special interest groups. In fact, most non-profit groups in the NWT are run by women while corporate organizations are **dominated by men**.

***Most non-profit groups  
in the NWT are run by  
women.***

However, most women we spoke to did not want to move away from their community activities. There, they can see the results of their work. In native or territorial government politics, they would be frustrated by what they see as a lack of action. That lack of action is caused by bureaucracy and over-regulation.

There is a general perception that men get into politics to get personal power or status. Women want to cause social change. (Professor Sylvia Bashevkin, quoted in Ulliyot, above.)

Women may feel they get a faster pay-off by sticking to specific causes and local groups. It takes a long time in territorial or federal politics or government to reach a position where you can directly affect decisions.

But northern women are starting to realize that, if they want to see action on the issues that are important to them, more women are needed in politics and senior government jobs.

We've found that nothing succeeds like success. Women who see other women in leadership roles start to think, "If she can do it, so can I." Women can then become positive role models.

Here is a short list of western NWT women who have done it. These women have been, or are now, leaders in their communities and territory. We hope the list will soon be much longer.

### **WOMEN LEADERS OF THE WESTERN ARCTIC**

For northern women, the 90's are a time of great change.

During these years, we have or will see more social and economic opportunities for women expanded greatly but at the same time, new problems and pressures have emerged even with the barriers discussed earlier in this report. The following women are our leaders in 1994 who were elected to their respective offices to effect



change and assist in making our communities a better place to live.

The Honourable Ethel Blondin-Andrew, Member of Parliament for the riding of Western Arctic and Secretary of State for Training and Youth.

Hon. Nellie Cournoyea, MLA - Nunakput  
Hon. Jeannie Marie Jewell, MLA - Thebacha  
Hon. Rebecca Mike, MLA - Baffin South  
Agnes Tardiff, Councillor - Aklavik  
Roxanne John, Councillor - Aklavik  
Lorna Storr, Councillor - Akalvik  
Alice Gully, Councillor - Colville Lake  
Gina Dolphus, Councillor - Deline  
Gabriel Mackeinzio, Councillor - Deline  
Betty Chinna, Councillor - Fort Good Hope  
Susan Blake, Councillor - Fort McPherson  
Stella Bayha, Councillor - Fort Norman  
Lorraine Doctor, Councillor - Fort Norman  
Dorothy Marshall, Councillor - Norman Wells  
Ann Marie Tout, Councillor - Norman Wells  
Mary M. Ruben, Councillor - Paulatuk  
Sandra Thrasher, Councillor - Paulatuk  
Martha Kudluk, Councillor - Sachs Harbour  
Jackie Joe, Councillor - Sachs Harbour  
Florence Elanik, Councillor - Sachs Harbour  
Lucy Kudluk, Councillor - Sachs Harbour  
Grace Blake, Councillor - Tsiigehtchic  
Louise Andre, Councillor - Tsiigehtchic  
Carolyn Blake, Councillor - Tsiigehtchic  
Dale Blake, Councillor - Tsiigehtchic  
Maureen Clark, Councillor - Tsiigehtchic  
Dawn Anderson, Councillor - Tuktoyaktuk  
Lucy Cockney, Councillor - Tuktoyaktuk  
Lena Cleary, Sub-Chief - Dettah  
Liza Peiper-Chario, Sub-Chief - Dettah  
Genevieve Clarke, Chairperson - Enterprise  
Evelly Coleman, Councillor - Enterprise  
Judy Kotchea, Mayor - Fort Liard

Barb McLeod, Councillor - Fort Liard  
Jeannie Dewitter, Councillor - Fort Liard  
Brenda Shannon, Councillor - Fort Liard  
Joanne Deneron, Councillor - Fort Liard  
July Capot-Blanc, Councillor - Fort Liard  
Berna Landry, Councillor - Fort Providence  
Dorothy Minoza, Councillor - Fort Providence  
Theresa Bonnetrouge, Councillor - Fort Providence  
Rosemary Minoza, Councillor - Fort Providence  
Sharon Lafferty, Councillor - Fort Resolution  
Euan Hunter, Councillor - Fort Resolution  
Violet Beaulieu, Councillor - Fort Resolution  
Jayne Miersch, Councillor - Fort Resolution  
Laverna Martel, Councillor - Fort Simpson  
Liza McPherson, Councillor - Fort Simpson  
Rosalind Mercredi, Councillor - Fort Smith  
Ruth Tourangeau, Councillor - Fort Smith  
Shirley Vandenberghe, Councillor - Fort Smith  
Beatrice Lepine, Councillor - Hay River  
Annette Wright, Councillor - Hay River  
Yvonne Norwegian, Chief - Jean Marie River  
Sarah Hardisty, Councillor - Jean Marie River  
Margaret Leishman, Councillor - Kakisa Lake  
Georgina Catholique, Councillor - Lutsel K'E  
Lena Marcellais, Councillor - Nahanni Butte  
Laura Vital, Councillor - Nahanni Butte  
Rosa Mantla, Councillor - Rae Edzo  
Maggie Jumbo, Councillor - Trout Lake  
Martha Drake, Councillor - Wrigely  
Pat McMahon, Mayor - Yellowknife  
Gail Cyr, Councillor - Yellowknife  
Jean Wallace, Councillor - Yellowknife

The Western Arctic has many other women who are leaders in their communities. They are the silent women who have creative ideas and knowledgeable opinions. These are women whose voices need to be heard. They have great wisdom to share and teach us.

***The silent women who have creative ideas are the ones whose voices need to be heard.***

### LEADERSHIP DEVELOPMENT FOR WOMEN

Both the Status of Women Council of the NWT and the Native Women's Association of the NWT have made leadership development a priority.

Experience has shown that, without women leaders, some issues just don't get dealt with. Would the federal government have launched a Panel on Violence Against Women, or passed "no means no" sexual assault laws, without women in the Cabinet? We think not. (See Kathy Ulliyot, "See Jane Run," Flare, October 1992.)

Women, especially non-aboriginal women, told us in workshops that they don't want people to think they're only worried about "women's issues." They told us quite forcefully that matters of self-government, economic and political power also concern them.

But, taken as a group, women do suffer from special hardships. Those hardships fall most heavily on native women. Both aboriginal and non-aboriginal women struggle with the same issues, though they sometimes have different solutions.

Women's priorities include family violence, sexual abuse of elders, women and children, child care, poverty, training and education, family law, suicide prevention, support for people with disabilities and a whole range of other health care and social service issues.

Women have been leaders in the quest for solutions to these serious problems. That's why they're called "women's" issues.



These are issues which a Territorial government dominated by men has failed to solve in more than two decades of public government using a self-government model. (GNWT, Strength at Two Levels, Yellowknife: 1991, 14.) Because women tend to work on problems at the local level, they and "their" issues get pushed down on the political agenda.

In the NWT, we can now point to the fact that our government leader, our Member of Parliament and the mayor of the capital city are all women.

But that doesn't show what's happening in the wider community. There are far too few women leaders in the Northwest Territories. Only three members of the Legislative Assembly out of 24 are women. No women hold the top civil service job of deputy minister, in charge of a department. Only two are assistant deputy ministers. There are no women regional directors. Only three women are Dene chiefs, out of about 28.

***There are far too few women leaders in the NWT.***

A few years ago, Cece McCauley of Inuvik was the only Dene woman chief, and the first in the NWT in modern times. Some older Dene men wouldn't speak to her. They said leadership was not a job for a woman. Those attitudes are changing.

As students of native history are finding out, Dene who choose women chiefs may be going "back to the future." When non-natives first met the northern native peoples, the Kaska Dene, the Gwich'in and the central Arctic Inuit all had at least a few famous women leaders. (Keith J. Crowe, A History of the Original Peoples of Northern Canada, Arctic Institute of North America: 1974, 35.) In fact, most aboriginal groups in the North were traditionally matriarchal.

Men and women divided up the work in most northern cultures. But women, especially women elders, always helped make important decisions in traditional times.

## ZERO TOLERANCE TO VIOLENCE

Wife abuse has not diminished in spite of eight years of work by government and non-government agencies. Many working in this field feel that at least one in four NWT women has been abused by her partner. The NWT rate of reported sexual assaults is the highest in the country. It is difficult to estimate how many women are actually sexually assaulted in a given year in the NWT. In 1989, 436 sexual assaults were reported to the RCMP; of these 348 were investigated. Using a national estimate that only 1 in 10 sexual assaults are reported to police, over 4000 sexual assaults may have occurred in 1989.

It is women who have also been the leaders in raising the grave issue of child sexual abuse in the NWT, and the NWT Status of Women Council has also become involved in promoting awareness of elder abuse and working with communities where this concern has been raised.

This is such an all-important issue for the north that it must be addressed at the highest level. As a society, we must recognize that eliminating violence and its causes are a priority, and that it is our collective wish that no citizen of the western NWT should leave a life in fear, abuse or neglect.

What can we do? Abuse is not a private family matter, and the consequences are felt by all of us. Without dealing with violence and abuse, we cannot restore traditional values or build healthy community/society. If the cycle of violence is not broken, the abuse can and will continue from generation to generation. The abuse of women and their families cannot be ignored and covered up. We must break the silence on all abuse.

***Abuse is not a private family matter.***

One way of doing this is to stop denial of the problem. Denial in the context of violence is similar to the denial that accompanies alcoholism; it is hard to face up to the truth. But the denial merely allows the alcoholism, or the abuse, continue.

Male leaders must be advocates of zero tolerance towards violence, not just the women of our territory. All leaders must take a stand supporting this concept and set an example for our children and future leaders.

The Zero Tolerance declaration proposed by Stephen Kakfwi and adopted by the Legislative Assembly is the most important proposition MLA's have ever considered because it says "We are the role models. We will pledge from this day forward to accept no violence in our lives. If we do not succumb, we will resign." If our people have no role models in this chamber, where do they seek them?

### HEALING: WOMEN LEAD THE WAY

There is a growing consensus among all our leaders, male and female, that our communities must heal before they can govern themselves.

Many people in our communities are recovering from colonialization, residential school syndrome and discrimination, resulting in alcohol and substance abuse, family violence, child neglect and abuse, and an underlying lack of self-esteem and cultural pride. Many have begun this recovery and many more still need healing. We heard this from woman after woman. The good news is, women are leading the way.

Joanne Barnaby, head of the Dene Cultural Institute on the Hay River Dene Reserve, said "The first priority of the people has to be to heal from past wounds. The Dene way has been to share, and non-Dene can share in this healing".

Barnaby, like Native Women's Association President, Bertha Allen, believes, "Women have been leading the way in the healing process".

Eileen Collins of the Hay River Women's Resource Centre agreed. She said non-natives have much to learn about spirituality and being in touch with nature. She said, "We need healing in both the native and the non-native communities".

Emily Saunders of the Native Women's Association and Hay River Reserve Treatment Centre, said "Dene women are very concerned with healing. Residential schooling left many people unable to speak their language or learn their true identity. People were lost, filled with shame and self-hatred". Parenting skills were also lost as well as cultural values and morals.

Women all over the north want their voices heard before self-government takes place.

Grace Blake, Chief from Tsiigehtchic urged women to lobby against any major moves for a new Western Constitution until a process of healing for families and communities is in place. We should stop building new roads, building more new buildings and taking on any more new major contracts for new programs.

A healing process for families and communities needs to be completed before we can govern ourselves. Alcoholism and family violence have taken a toll in too many families in our communities. If we want to live in a sharing, caring and respectful society, we need to practice values in our daily lives and demand that our community leaders and government live up to them. We do not have to put up with alcohol abuse and drugs, violence, sexual abuse, immorality, prejudice and other destructive obstacles in our communities.

***A healing process for families and communities needs to be completed before we can govern ourselves.***

Why do people elect their leaders? Because they know they can do the best possible job for them, that should be the case, but in some cases, they are elected through popularity or name. We need leaders that are examples and who have a sense of caring for the people, and not gaining selfish needs. Leaders need to check their values too. How can you be a good leader if your household is in disarray?

As parents, we must ask ourselves - are our values strong and healthy for our children? We need families to be stable and examples to our children. We drink, they drink, we curse, they curse, we gamble, they gamble, etc.

One Elder said "Train children in good, strong values and they will be good future citizens. It is not hard to change your values and they will be good future citizens. It is not hard to change your values and ways if your family is hurting. Once you change within yourself, everything falls into place."

With your family in good order, you can become a good leader because you have experienced the hurts and you could do something about it. A word of encouragement to the leaders of the community, and government: Check your ways and improve upon it and you'll be surprised how you can make a difference.

### A CODE OF CONDUCT

Northern women throughout the Western Arctic strongly stressed their anger and frustration with many of the male Government leaders and their roles in leadership as role models. They want leaders to be sober and healthy, they want them to have a more holistic approach to governing.

Leaders must take personal responsibility. The recommendations for a Code of Conduct to be developed and built into the Western Constitution come very loud, clear and unanimously. Northern women advise that every organization throughout the Western Arctic, which has public responsibilities or provides northern leadership and northern role models for our Youth and future leaders, must have clear, published guidelines of conduct. These Codes of Conduct must include consequences of noncompliance and recall policy for both MLA's and anyone holding a position of public interest.

Each person holding a position of public interest has a duty and responsibility to respect and carry out the guidelines. This also means to have the responsibility to confront one another when conduct is not meeting the expectation at all times.



The following guidelines have been recommended:

***Failure to live up to high standards of conduct must not be overlooked.***

1. Sobriety and Health: Have sobriety for at least two years, no charges pending;
2. Monitor punctuality, attendance and fitness to participate at every session;
3. Report on unexcused tardiness, absence or non-participation at business sessions to the community constituency or employer represented by the member;
4. That all travel expenses, honoraria and return airfare are recovered when a person is absent or unfit without reason;
5. That every statement made at a public meeting is respectful of the conduct guidelines and statements that are out of line are challenged and withdrawn;
6. Failure to live up to high standards of conduct must not be overlooked;
7. Anyone who has broken guidelines of conduct in a serious or repeated manner should not be permitted to stand for election for a reasonable period of time;
8. Anyone convicted of an indictable offense under the Criminal Code should be barred from entering politics of any form for a number of years. Anyone charged with serious offenses e.g., child sexual abuse and family violence should sit aside until cleared.



Many women expressed their concern about the changes in northern history. Young women shared their family values and how the teaching from the Elders taught them about traditional life and left them with many values to live by. Several young women ask, what are we going to tell our children of the future? Will we have to tell them how we lived with violence, family break up, dysfunctional families, social upheaval, gambling and poor role models in leadership? If we don't have an enforceable Code of Conduct, we have nothing to protect the northern children or our future leaders in the Western Arctic from becoming dysfunctional leaders.

### EDUCATION

Northern women, from Elders (seniors) to the Youth at forums and conferences, both formally and informally shared a wide variety of educational issues in the areas of racism, self-esteem, feminism, sexism, poverty, young women with disabilities and teenage motherhood.

They also discussed the media, poverty, violence and control over the curriculum to educational experiences. Identifying racism was shared by both aboriginal and multicultural women through stories of personal experiences expressing pain and disappointment.

***The failed dreams of youth have an impact on the morale of the whole community.***

The mothers expressed the need to have their children understand and appreciate their heritage.

Throughout the Western Arctic, women expressed the need for more control over policy, curriculum and support services as necessary to create an educational experience that reinforces positive identity.

Chief Grace Blake questioned what do people want from us. Is it to be a walking text book? As pure academics, we are not given any credit for our life experiences, especially if we are adults returning to further our education. When attending

University, you are expected to be a superwoman to have a high average to take part in school activities and hold a job to help feed your children if you are a single mother.

Throughout the Western Arctic, we heard women say how frustrating it is to see so many young people continuing to drop out of school. Especially when they have moved from their communities to the south, they get very lonely in the larger regions or cities. It is a different way of life. They return to the communities and they are not able to fit into a traditional life any more because they were not properly trained by their elders. They are unable to go into government jobs or training programs because they lack upgrading.

The Inuvik conference heard women Elders say that their knowledge should be used more in the areas of traditional life skills, such as Wilderness survival programs. They said that Elders could teach more aboriginal language and culture and they say that these aboriginal people who teach should be paid for their services on the same basis as non-aboriginal teachers. Post secondary education and training had many women concerned and felt that the institutions are not meeting the needs of the communities.

Teenage mothers continue to be discriminated against in terms of not having enough formal training. However, the move by the regional school boards to provide child care services in high schools is a great motivator to keep young women in high school. As one participant who is a young mother pointed out, returning to school requires a great deal of courage because once you drop out, you don't have the self-esteem to go back.

We need to approach education for women differently. At present, many courses are only available down south. Women cannot leave their families, nor can they afford the cost of academic education, especially in the south. Therefore, we need more training and mentorship programs. These could easily include some academic or evaluation component to ensure that the trainees were actually receiving the "education" they required. Alternatively, the programs could be augmented by academic education.

Many women expressed the need for training programs for NWT students and adult education to be available to meet the needs of the communities. This will prevent the Affirmative Action Policy from continuing to set up young women for failure placed in positions where they have not had adequate training.

Opinions were mixed over the CEIC Pathways to Success strategy for training aboriginal people and many women feel the training allowances are inadequate in the north because of the high cost of living and the training time.

We need to encourage women to enter the fields of math and sciences. Women need support and encouragement from both men and women to do this. Our men need to be educated about gender discrimination and how to be more supportive of women working in all areas. Men need help to accept the change and give up some of their control.

Society must stop pushing women towards the support sector that are usually low paying jobs with no real future and help prepare women for more management positions so they will be in positions of authority to help make changes.

The plan for communities to take control and responsibilities for their own services will not be successful until our young people are educated and we have northern trained professionals who will be more culturally sensitive.

Northern women believe that the education system has to be one of the most influential institutions in the Western Arctic offering post-secondary education as well as specialized training e.g., Nursing, Women's studies, and second language programs staffed with appropriate aboriginal teachers who will provide or include native studies, and be culturally sensitive to the students and communities' needs.

As one woman who spoke very softly stated, "I have no written speech and no structural education. Everything I have shared with you today, I have been carrying in my heart because I have seen it, I have experienced it, and I want my grandchildren to go to school and graduate".

## THE SOCIAL CHARTER

Our ancestors taught us that each one of us has the responsibility to be the best person we can and to share our talents and skills with the community. That community sharing is the founding principle of this Social Charter and in addition, includes:

***Women need to be equal partners in the social, political, and economic mainstream of society.***

- respect for the elders of all our peoples and their traditional knowledge;
- respect for women as equal partners in the social, political, and economic mainstream of society;
- respect, care and protection for our children;
- recognition of the dignity and importance of labour, and the obligation of employers to treat workers fairly; and
- recognition of the right of all people to a life free from violence.

These principles are to guide government in the development of legislation, social policy and the allocation of resources. In addition, it is the responsibility of government to make certain that all residents of the new western territory have equitable access to:

- child care;
- a safe work place;
- a safe home and community;

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- economic equality;
- affirmative action programs to eliminate systemic barriers to education, employment and political representation for disadvantaged groups;
- programs to eliminate drug and alcohol abuse, physical and sexual abuse and family violence.

Further, government is obliged to make certain that all residents of the new western territory have equitable access to:

- a basic standard of health care and social services;
- education and training opportunities;
- adequate shelter.

All of the women attending the various forums were insistent upon the inclusion of a Social Charter in the new Constitution. If this could not be achieved, they strongly urge the development of a NWT Human Rights Code which would include these principles.

## WOMEN AND ECONOMIC POWER

Finding our voices and being heard. "Speak loudly, speak softly, but speak" was heard from panel members in Inuvik.

***Speak loudly, speak  
softly - but speak.***

This message that women must speak up and demand that their voices be heard, emerged from all of the lively forums across the Western Arctic. In a forum in Yellowknife, women felt it necessary to look at and examine the definitions of Power. Women did not see power in terms of power over others, but the need to have power to affect change. They felt that in the



quest for power, women must support other women and that more women must come forward to recognize and take that power.

Women agreed that money is power. Whether women are working in the paid labour force or responsible for the family finances in the home, women agreed that most women have not been very successful at translating money into power.

Money has allowed women to gain some measure of control over their personal lives but has not necessarily meant greater power for them in a larger sense. Women and their economic power will increase in the NWT when more women recognize their own sources of power and the various economic roles they already play, for example, as Executive Directors, Producers, Reproducers and Consumers. Some women spoke on how pay equity could be a means of reducing poverty among women and to achieve economic power. Pay equity could help to change the roles of the labour market where there is a great deal of difference in pay between traditionally female labelled jobs and work done presumably by men.

Women in the North are not properly paid for the work they do, and many stated that they are tired of being asked to be volunteers when the men get paid for similar jobs. Women feel they are under-involved in corporate Boards and Commissions and underpaid for the same jobs.

There was a general recognition that gaining economic power is necessary if women's voices and experience are to be heard and considered in all facets of development of a New Western Constitution. Many women feel that government economic policies do not meet the needs of women, nor are women consulted at any stage in policy formulation. Many women felt left out of the land claim negotiations and they were very rarely consulted.

Many women feel economic power will be achieved only when more women hold decision-making positions, and when you look at northern women in politics and Senior positions in government, that is not happening.



One woman in a Yellowknife forum suggested that we as northern women should take power seriously, and reject the allure of "either, or" choices, of theories that suggest that men move over to share power with us, this will not happen easily or without a consistent strategy and struggle. Some women felt that we need to create institutions of our own. Even though most women want to feel there can be an equal partnership, some feel women are at the cutting edge of change; we are the ones who have been affected, we are the ones who lead the way to make it better for our children. Women entrepreneurs need to be a vital component of a strong northern economy.

Northern woman entrepreneur, Vicki Latour of Hay River gave this message to women at the Hay River Conference:

*For women to go into business, they need plenty of money, time and a very sound plan. Women have ideas that are just as good as men's. We just don't have as much confidence or support to put those ideas into practice. Women must really encourage their daughters to go for the top.*

*Regarding business and the Constitution, we need a set of principles and guidelines that will encourage business growth. Women must have a strong voice in both business as well as in government. Issues of taxes, UIC, and CCP all affect women in business. They therefore must be involved and informed and be part of the decision-making process. We must ensure fair business practices and ensure that business opportunities exist for women. We need to ensure that there is proper support for cottage industries and crafts which are usually areas of women's employment. We need to look to co-ops and other creative ways for women to create employment and careers for themselves while promoting traditional knowledge and skills. Therefore, we must be part of policy-making that will enhance these possibilities. We must take part of business, politics, and the economic decisions as these shape much of our lives. We must pay attention to development, environment issues and economic growth.*

As Alphonsine McNeely said:

*We as women have to stick together and together we make great political leaders.*

### FUNDAMENTAL PRINCIPLES OF CONCERN TO NORTHERN WOMEN

1. **A new Western Arctic Constitution must establish minimum rights for all Western Arctic citizens regardless of ethnic origin, community or region of residence, gender, ability or sexual orientation. Other levels of government, including aboriginal governments, should not be allowed to "opt out" of upholding these rights.**

Although we fully support the aboriginal right to self-government and the creation of self-governing systems, almost all women we spoke to were extremely concerned that basic rights and equal access to a minimum standard of government services are available to all. As we have stated before, male-dominated native organizations do not always represent the interests of aboriginal women and should not be seen as acting totally on their behalf. Women are afraid that if the new structure does not protect them, in some communities they may have no rights at all.

2. **The social and economic rights of all citizens must be guaranteed in a western NWT constitution by means of a Social Charter.**

Many women suggested that social and economic rights be included in a western NWT constitution. Presumably, all residents would have a right to those benefits and services which are required for a reasonable standard of living. These might include rights to health care, education, housing and perhaps a guaranteed annual income. The recognition of such rights would go far to improve the disadvantageous living conditions which typify the existence of many northern women and their children.

The recognition of such rights would probably force a long overdue rationalization of the excess of social welfare programs initiatives that presently exist along the lines suggested in the report Strength At Two Levels. It might also be that if such rights were included in the western NWT constitution, women would have less to fear from greater decentralization suggested in that report. Such a constitutional guarantee would obligate all governments in the western NWT to provide the means to ensure a reasonable standard of living. However, the actual form of delivery could be left to each community, band or region, based upon local concerns and needs. It would be essential that communities, bands or regions could not "opt out" of these rights.

The charter would need to comprise four basic elements, as follows:

- *A statement of the values and principles which residents of the Western Arctic affirm and which should give governments in the realm of social policy;*
- *Institutions for developing, protecting, negotiating, monitoring, and enforcing policies which give concrete expressions to these values and principles;*
- *A provision for broad public participation to ensure that policies, programs, and services continue to be responsive to public need;*
- *A recognition that territorial sharing is required for realizing the social charter's principles across the western NWT.*

We can say that the idea of a social charter guaranteeing basic social and economic rights was repeatedly emphasized by the vast majority of women we spoke to. While many of the details remain to be worked out, we are confident in recommending this measure to you at the level of principle. Our forum saw a social charter as a statement of values. Among the rights they saw as most important were health care according to holistic principles; the protection of children, elders and the extended family, social welfare including work, housing, education, a guaranteed annual income; recognition

of work in the home, as well as waged work; and custom adoption.

3. **Communities should be recognized as the basic unit of governing authority, with power flowing up to the central government. Only these two units of government should be established in a new western territory constitution. Regional government systems should not be entrenched but rather, community governments shall have the constitutional right to form a regional government if they so desire.**

In this women are generally in agreement with the constitutional development principles established by the Western Constitutional Forum (WCF) in 1987. Dene, Metis and Territorial government leaders spent many years establishing principles for constitutional development and in the end concluded, a new constitution must balance two principles:

- i. *The protection of individuals in that each and every bona fide resident of the western jurisdiction should have the right to participate in and benefit from public institutions, programs and services according to basic democratic principles guaranteed in the constitution; and*
- ii. *The protection of the Dene, Metis and Inuvialuit in that each aboriginal community in the western jurisdiction shall be explicitly recognized in the constitution, and mechanisms shall be entrenched to enable each community to flourish as a distinct cultural entity regardless of its proportion of the total population.*

The WCF saw community and territorial governments as the two ends in the balance between these principles; community government being the main way to make sure "government decision-making (rests) as closely as possible with those governed; people and communities must have control over those matters which affect them exclusively and they should have input into and influence over those decision which affect them as well as others".

By not entrenching regional governments, communities continue to be in the driver's seat - allowing the people of each community to determine whether they want a regional government, and if so, what powers they wish to delegate to it.

We believe this is the best way to mitigate women's concerns about losing rights and basic standards of service under self-government. It also gives them a more powerful and meaningful say (as voters at the community level) in the creation of self-government.

**4. The constitution must recognize the equality of men and women in its Preamble and Statement of Principles.**

Women often disagree on the meaning of equality and, to be frank, a great many aboriginal women have difficulty with the concept: they don't want to be "the same as men". However, few women agree with the notion that they are inherently inferior to men or that they deserve less recognition or value because of their gender. Particularly, women expect that they will enjoy the same rights as anyone else living in the territory.

Our ancestors recognized "equal worth" in their traditional values. Equality among all people, and the equality of humans and all other living creatures, were recognized. Everyone, as equals, had reason to respect themselves and take pride in doing well whatever it was their particular responsibility to do. There was pride in being self-reliant, in being someone who could contribute something to the family and community.

These traditional values must be recognized and affirmed in a modern constitution.

The constitution must also permit the creation of special programs and policies to address the inequities faced by disadvantaged groups.



5. **The aboriginal right to self-government must be entrenched in the new western territory constitution. Aboriginal rights relating to language, culture and any other political rights which are not included in claims agreements shall be entrenched in the constitution and means shall be found to help ensure that all aboriginal rights are protected. Aboriginal people must also be guaranteed participation in the central government.**

We don't have much to add to the current discussions on aboriginal self-government except to reiterate our concerns that aboriginal governments in the Western Arctic be obligated to extend the same basic rights to their constituents as laid out in the territorial constitution.

6. **Accountability of the government and members of the Legislative Assembly.**

Accountability is a growing concern for the NWT electorate. Many people prefer to see consensus-style government remain but are becoming uneasy with the "chaos" that sometimes seems to prevail. Because each member is elected on his or her own, there isn't a clear, common agenda by which people can measure progress. Of equal concern is the lack of clear government authority to take action. Our proposals for a new governing system attempt to provide solutions to these problems. If no accountability is measured and enforced, then there is no accountability. A Code of Conduct must be entrenched in the constitution to ensure accountability of both government and members of the Legislative Assembly.



## NORTHERN WOMEN'S VISION FOR A WESTERN ARCTIC CONSTITUTION

1. **Women must be represented in all government institutions and processes, including Western Arctic constitutional development. Women should make up 50% of all government appointed boards, agencies and commission.**

Northern women have made it clear that they want their voices heard and listened to. They must be part of the Western Constitutional process.

Northern women have unique experiences and perspectives that have to be heard in the process of constitution making. Northern women make up approximately fifty per cent of the population. We are sisters, mothers, grandmothers, aboriginal, non-aboriginal and multi-cultural women.

Northern women are saying they are frustrated by the fact that the only time they can assert some control over their political leaders and institutions is on election day once every 4 or 5 years and every 2 years for Municipal. Between elections, many women feel they have no voice in the affairs of government. They do not feel that male politicians and civil servants understand their problems or represent their interests. Many male NWT leaders still feel and think they represent women in their category of all people. When you speak to these leaders, they have no idea that their assessments of women's issues are off base. To these men, women's role still remains as care givers to them as male dominates (head of the household) and to their children. They do not recognize the value of women's work and they see themselves as still being the gate keepers of major social institutions who control material resources and are able to impose on females their ideas of appropriate behaviour. Many women said that, on the occasion when they are asked for their opinions, they are delighted and energized. What comes through loudly and with great passion is that women care about the future of the NWT and have a great deal to say. We want to be part of the planning process and, want to be respected for our opinions. We must be well represented at the constitutional negotiating tables where women have been so under-represented.

There is a real, and growing problem of equal political representation for women and other disadvantaged groups. We feel these issues must be addressed now. As northern women, we not only need the opportunity to speak at constitutional commission hearings, we also need some evidence that we are being heard. It is critical.

The old style politics of back room deals and high pressure negotiations in which women are excluded continues to be a systemic barrier to women's participation in northern politics and government. Women's lower incomes and the lack of affordable child care are often huge barriers that must come down.

Many women felt that their concern received very limited attention in the Bourque Commission's final paper. They felt constitutional lawyers did not take their issues seriously enough in its preparation. Women were glad to see at least one able woman appointed to the Commission to represent their interests. The Constitutional Development Steering Committee has four women, but this still does not recognize women's request for equal representation.

We can say with confidence, based on our consultations to date, that Western Arctic women want to be well represented in a constituent assembly or other body set up to draft or ratify a new Western Arctic constitution. Many women felt that a 50% representation would be equitable. Women did not think of this as a "quota", but as a simple and fair reflection of reality.

Some of the barriers identified included the present adversarial political style, ignorance of the process, intimidation, poor self-esteem as a result of media images, and financial and childcare barriers.

A large majority of the women we consulted, both Aboriginal and non-Aboriginal, did insist on proportional (50%) representation of women on all GNWT-appointed boards, agencies and commission. Women felt that without legal requirements in place, they will not gain access to power for a long time.

2. **Women's equality rights must be protected in a new Western Arctic constitution, and women must be informed of their rights. The constitution should state that women are equal participants in the social and economical mainstream of society.**

The adoption of the Charter of Rights and Freedoms, with its guarantee of gender equality, was an important political victory for women.

The main purpose of this round of NWT constitutional negotiations seems to be the reallocation of legislative power between the Territorial and community levels of government, as recommended in the report Strength at Two Levels, and the redefinition of Territorial institutions.

Some officials and political leaders may fear that any discussion of rights who has them, who doesn't want them - will lead to a proliferation of demands from various "interest groups" within northern society to participate in the present constitutional round.

We must insist on the legitimacy of the demands of groups representing northern women, Aboriginal peoples, seniors, multicultural women and persons with disabilities. At a minimum, the equality rights granted to women in the Canadian Charter of Rights and Freedoms should be protected in the Western Arctic. There have been suggestions that certain other rights be added to a Western Arctic constitution, for example, property rights and social and economic rights. Women are not an "interest group"; we are overlapping components of Northern societies.

Property is something women generally have less of than men. Presumably, therefore, the protection of property rights would disproportionately benefit men. Further, the inclusion of property might permit corporations to argue that their economic interests are constitutionally protected.

In addition, such recognition might place significant limitation upon the Western Arctic's ability to legislate in relation to property and civil rights, presently the main source of Territorial legislative power.

As the opposition to the Meech Lake Accord illustrated, any perceived threat to women's existing Charter "stake" will evoke a fierce response. Women want to propose clauses in a Western Arctic constitution to increase their "stake"; however, it is probably more important for women in this round of constitutional negotiations to ensure that which they have gained by virtue of the Charter is not taken from them, intentionally or unintentionally.

We found in our consultation with Western Arctic women that many were not aware of their existing rights under the federal Charter. Some were unsure of the meaning of equality, and feared that it meant "being like men". We can assure the Commission that the vast majority of women we spoke to do not wish to be like men. Rather, they want to see their positive, caring values become the standard in society, for men as well as women.

At our forums, participants wanted to discuss guarantees of equality in the broadest sense. This meant to them, not only equality before the laws, and freedom from discrimination based on sex, marital status or sexual orientation, but also social, economic and personal equality in society.

Equality means laws that have the same impact on everyone. Equality can include treating women more favourably, to correct the disadvantages they have suffered; using language that consciously includes women; respecting gender, cultural and individual differences; and removing systemic barriers to equality of opportunity in the marketplace and in politics.

The women at our forums and conference told us that equality principles must be included in a western Arctic constitution. They want Human Rights legislation that is enforceable, pay equity legislation, and employment equity. They felt strongly that a Western Arctic constitution must comply with the existing federal constitution and Charter of Rights and Freedom.

Many felt that gender equality was the fundamental value they wished to see entrenched in a Western Arctic constitution. They wanted explicit recognition of the principle that women are equal participants in the social and economic mainstream of society.



Women extended their concern for equality in particular to their disabled sisters. In the Bourque Commission Final Report, the NWT Council for Disabled Persons competently presented the case for special attention to disabled women's issues. These include the fact that disabled women are more likely to be sexually assaulted, they are less likely to be employed, and they earn less than the average for employed women.

Physical barriers make it even more difficult for disabled women to participate in politics and government than for other women. Our forum recommended that systemic, physical and attitudinal barriers to equality for all women must be eliminated, and that codes and laws be implemented to enforce these principles.

Generally, women want a better identification of the barriers that prevent the full inclusion of women in society, and a review of progress towards eliminating these barriers to take place every three years.

As noted above, these barriers include: lack of physical facilities for disabled persons; financial and child-care barriers for many women; and an adversarial political style that conflicts with women's socialization to be cooperative and nurturing.

Many attitudinal barriers on the part of both men and women also impede progress towards equality. We hope that no one in the NWT still believes that women are inherently inferior to men in any meaningful way--but we have our doubts that this is the case. Not a few Aboriginal and non-Aboriginal male leaders have stated that (a) women are special interest group; and (b) women do not belong in the political process. The women we talked to do not accept that they are a special interest groups and will not be told they have no place at the negotiating table.

We heard a lot of hope and a lot of anger expressed around equality issues for women in the Western Arctic. The Status of Women Council of the NWT and the Native Women's Association of the NWT will work to create materials and provide forums to inform women better of their existing rights, and to encourage frank discussion by all northern women of solutions to the

many barriers that prevent our full and equal participation in norther society.

Northern women very much wanted to take a holistic approach, incorporating the health and well-being of people's spirit, body and mind, from the individual, to the family, the society and the environment. They felt that such an approach was in harmony with traditional Aboriginal values, as well as with the more positive aspects of women's socialization in western society.

4. **The rights of our Aboriginal sisters and their families, including the inherent right of self-government, must be entrenched in a Western Arctic constitution.**

Aboriginal women at our workshop, as well as those we spoke to privately, made it clear that Aboriginal people in the Western Arctic consider themselves nations and ask for the special rights and protections accorded to nations. The vast majority of women consulted, both non-aboriginal and Aboriginal, support the recognition of Aboriginal rights, and in particular the inherent right of self-government, in a Western Arctic constitution.

We will not conceal the fact that this appeared to mean different things to different Aboriginal women. Some women felt that their individual rights as women would not need special protection within the Aboriginal collectivity, governed by an Aboriginal government; others wanted separate assurances of women's rights, that Aboriginal governments must abide by. This is obviously a matter that Aboriginal women and Aboriginal communities must work out for themselves.

Aboriginal women mentioned the double burden of discrimination they suffer under, as both women and Aboriginal people. They are discriminated against and abused by non-Aboriginal men and women. Some also saw dominance by Aboriginal men in small communities as traditional. Others said that male dominance and violence against women were not Aboriginal traditions, but had come in with Christianity and the fur trade.



Women at our forums in Yellowknife suggested that the inherent right to self-government should be recognized at both the federal and Territorial levels. One popular model for Aboriginal self-government started with a Council of Elders, who determine policy and legislation for Aboriginal people at the Territorial level. Block funding would be allocated to regions, based on the identification of needs by communities.

Aboriginal people would have the right to freely determine their political, economic, social and cultural development. Laws of Aboriginal governments would apply to all persons, Aboriginal or non-Aboriginal, within a particular jurisdiction. Power would flow from the community to the region and the Territory.

We strongly agree with the principle of communities controlling and administering many government programs, and we will suggest a further method for ensuring communities and "communities-of-interest" are heard at the political level.

In regards to women's representation at the political and senior bureaucratic levels: most of the women interviewed were not comfortable with the notion of guaranteed seats for women in the Legislative Assembly, or a "Women's House" or any other form of enforced participation. As women tend to be most active and involved in issues at the community level, we believe that a genuine emphasis on community control will satisfy many of our concerns for better representation in decision-making. There was, however, widespread support for other measures including:

- 50 per cent representation of women on government-appointed boards and agencies;
- programs to promote and develop women's leadership skills;
- programs aimed at removing the barriers to women's participation in politics, i.e., assistance with child care.

- an understanding that women's increased representation in cabinet will be at least as important as balancing all other considerations in cabinet appointments.

Women envisioned Aboriginal government as embodying a sense of harmony with the earth and respect for all peoples. They believed Aboriginal people with their governments should have veto power over issues directly affecting them. The territory should adopt a model of dispute resolution which reflects Aboriginal values of healing and medication, instead of an adversarial system such as now exists in the courts and most legislatures. Sharing and interdependence were recognized as fundamental values for Aboriginal peoples and their governments.

5. **The right of all people, but especially of women and children, to be free from violence of all kinds, should be recognized in a Western Arctic constitution. There must be zero tolerance toward violence in our society. Women and children should be informed of their right to be free from violence.**

Mothers affected by family violence have children who will inherit the negative self-image from their mother. These children may become leaders tomorrow with a low self-esteem or their perception and self-image of low value.

Violence against women is a grim reality; it's shadow extends right across our society to darken every nook and cranny of women's lives. The threat of violence faces every woman, simply because she is a woman, and plays a profound role in structuring the dimensions of her life.

How can the individual woman attain personal liberty and equality under these constraints?

6. **A Western Arctic constitution must be drafted in gender-neutral language.**

Women we spoke to recognized the importance of language in shaping reality. They favoured gender-neutral or inclusive language not only in a constitution, but in the school system and all government publications. Our constitution must show a firm commitment to gender-neutral language because it does matter to women and it will matter in the development of future generations.

## PARTICIPATORY MODELS OF GOVERNMENT

### The Legislative Assembly

Northern women of the NWT recommend that, through partnership and cooperation, that a new western territory government be more participatory. We favour representation that provides an advantage to smaller aboriginal communities. Members would continue to stand as independents. The Assembly's legislative authority would not change. However...

1. The **government leader** would be elected separately by all new western territory citizens. So that his/her selection would not be dominated by the votes of the larger urban, mostly non-native centre, the majority vote in each community would be assigned an extra point. The government leader would then have to win the popular vote as well as the majority of community points.
2. The **speaker** would not be drawn from the ranks of the members. S/he would be an elder from the community at large, appointed by the Assembly. The speaker would also be responsible for enforcing a "Code of Ethics" that needs to be developed by the Assembly for its members. The requirement for the Assembly to adopt a code of ethics should be referred to in the constitution.

3. The government leader would select her own **cabinet** members from amongst the MLA's on the understanding that there needs to be a balance between men and women, native and non-native, and urban and rural representation in addition to the other considerations of cabinet selection. Her cabinet would have to be approved by the other members but there would be a limitation on how many of her appointments they could reject.
4. The Assembly's legislative powers would diminish. However, some reference must be made to the powers of the community to control and administer government programs and services that directly affect their well-being.

#### The People's Assembly

The idea for a People's Assembly arose out of the identified needs for:

- greater community control and influence in decision-making;
- fairer representation of women; and
- fairer representation, more effective - and more efficient - participation of what we call "communities of interest", the many grass roots organizations affected by or directly involved in government programs and services.

In meeting these needs, we didn't want to bend the democratic principle too far, nor did we want to create yet another layer of government that would drain energy and resources away from services. The People's Assembly is potentially, one way to meet these requirements.

The People's Assembly would be comprised of the following governments or organizations which would be entitled to one vote:

- the senior elected representative of each city/town/hamlet in the new western territory;
- the senior elected representative of each aboriginal and/or regional government (this could include individual band councils or Metis locals); and
- the senior elected representative of each society or association incorporated under the Societies Act which could prove a territory-wide membership of no less than a certain number of individuals or groups.

Each member of the legislative assembly would also be entitled to one vote.

The People's Assembly would not have it's own administration, infrastructure or legislative authority. Rather, at the beginning and end of each Legislative Assembly, The People's Assembly would be called together to hold public conference with the Members of the Legislative Assembly for a maximum of approximately five days. And in that period of time, the group would work to formulate the priorities of government for the next 4 years.

The Legislative Assembly would not be required to adhere to this mandate and members would still be free to represent their constituencies as they saw fit. However, at the end of the term of that Assembly, The People's Assembly would be convened again to publicly review progress on the priorities it had agreed upon and set the stage for candidates and the electorate in the coming election.



## CONCLUSION

Northern women have made a very strong point in this report that we have unique experiences and perspectives that must be heard in the process of developing the Western Constitution. It is important to ensure that women have the opportunity and means to voice these experiences and perspectives. Women continue to fear exclusion from the processes that count in constitution making.

Northern women continue to be significantly under-represented with only four women on the Constitutional Development Steering Committee. This must be changed.

Women may be relative newcomers to the process of constitution making, but we have gained valuable experience from our participation in the Bourque Commission process and the Meech Lake Accord.

It is imperative that this process successfully conclude in a new Constitution that meets the needs of all northerners. If this does not happen, we may forever pass up the opportunity to make positive change for the North. We cannot stress this point strongly enough; we understand what failure to do so means.

With the failure of the Charlottetown Accord, many chances to heal our country deteriorated. This impacts on our economy, our collective cultural health and our identity. With the many social problems prevalent in the North, we cannot afford this failure.

Northern women in the Western Arctic have spoken. They have shared their vision of what they want to see in a new Western Constitution. An equal partnership with a focus on holistic governing is required. If you truly represent women in the constitutional process, we challenge you to respect our voices and our vision.



**A REPORT PREPARED FOR  
THE N.W.T. TREATY 8 TRIBAL COUNCIL**

**A COMMUNICATION TO THE  
CONSTITUTIONAL DEVELOPMENT STEERING COMMITTEE**

**THE SPIRIT AND INTENT OF TREATY 8  
IN THE NORTHWEST TERRITORIES:  
"As Long as the Sun Shines, the River Flows, and the Grass Grows"**

**By: Wendy Aasen**



## Executive Preface

I would like to thank the N.W.T. Treaty 8 Chiefs for entrusting me with the very important task of researching and speaking on the Spirit and Intent of Treaty 8 in the Territories.

The report that follows is a preliminary effort. More work needs to be done to fill in the cracks and round out the information we have gathered so far, but I think that the work is important because it shows that the N.W.T. Treaty 8 Chiefs are asserting their sovereignty in a way that is consistent with the spirit and objectives of their forefathers as the original signatories to Treaty 8. Treaties for our people have always been sacred and we entered into Treaty to maintain the peace with Euro-Canadians and our independence and sovereignty - - For As Long as the Sun Shines the Rivers Flow and the Grass Grows.

I would like to thank all those people (researchers, scholars, band members, chiefs, and elders) whose names we have mentioned throughout this report. Especially noteworthy are those First Nations citizens who took the time to go and speak at meetings, hearings, and inquiries and who went on the record for future generations through interviews.

I hope that the findings of this report will be seriously considered and adopted by politicians, community leaders, scholars, and the general public. I hope it will be used as an educational tool at all levels. So much work needs to be done to educate and create an awareness amongst the newcomers, and the guests who share our lands.

It is more important that Treaty 8 First Nations citizens, particularly the youth, begin to look at the elders as their living historical libraries and to pay attention to their knowledge and wisdom. In this way, we will better understand ourselves as sovereign nations of people. I hope this report will help in that effort.

I would like to thank Wendy Aasen who assisted me and made it possible to capture the Spirit and Intent of our Elders as their stories unfold throughout this report.

I once again would like to thank the N.W.T. Treaty 8 Chiefs for giving me the opportunity to serve through this task.

Mushi Cho



Francois Paulette  
Advisor,  
N.W.T. Treaty 8 Tribal Council.



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**NOTE:** Pages 102 and 105 of this Report are missing  
and were unavailable at the time of printing.



The Language used in the Treaties with the Indians should never be construed to [the Indians'] prejudice. . . . How the words of the treaty were understood . . . rather than their critical meaning should form the rule of construction. (Chief Justice Marshall in *Worester v. Georgia*)

An Indian Treaty, or for that manner any formal arrangement entered into with . . . an unlettered people, should not be construed according to strict or technical rules of construction. So far as it is reasonably possible, it should be read in the sense which it is understood by the Indians themselves. (Justice W.A. Macdonald 1957, in Fumoleau 1976:151)

The Treaty Commissioner said, "We don't come to make trouble. We come for peace and to talk about money. We come for peace. From now on, there will be lots of White men. So if the White men come you will treat them just like your own brothers. And the White men if they see a poor Indian in trouble, they will help, just like he was their own brother. That is why we came here . . . . That is why I brought this money." (Susie Abel, present at Treaty 8 negotiations, recorded by anthropologist June Helm in 1971, in Fumoleau 1976:89-92)

We talk so much about oral history. We have departments encouraging oral history, to be maintained. And sometimes we have double standards but when we talk about oral histories of treaties that these treaties were **international instruments**, and arrangements with the Crown, that those oral histories of our people are not recognized. (Francois Paulette, addressing the Constitutional Development Steering Committee December 3, 1993)

## 1.0 INTRODUCTION TO THE REPORT

### 1.1 The Context of the Report

The Constitutional Development Steering Committee (C.D.S.C.) has asked for input into how the Treaty 8 Tribal Council would like to see the constitution develop in a New Western Territory. On December 5, 1993, Francois Paulette addressed the C.D.S.C., and put forward the N.W.T. Treaty 8 Chiefs' position, which was documented in September in the *Interim Report - Synopsis of Protocol: Nationhood (Treaty 8 First Nations) within a New Western Territory (N.W.T. Act)* (Paulette and Aasen 1993). Since then, the N.W.T. Treaty 8 Chiefs decided to investigate constitutional and treaty issues with other treaty groups using a structure parallel to the C.D.S.C. (see appendix 1.) The Treaty 8 Tribal Council Chiefs are also finalizing a Protocol Framework Agreement for Treaty Land Entitlement with the federal government.

This research report, on the spirit and intent of Treaty 8 in the Northwest Territories, is designed to document and reference positions of the Treaty 8 Chiefs. Its primary goal is to critically investigate the history of the signing of Treaty 8 in the N.W.T., the promises made at the time of its signing, and how these promises were interpreted by the Dene. The spirit and intent of Treaty 8 is of vital importance to Treaty 8 N.W.T First Nations:

the content of the agreement . . . as First Nations would have naturally understood them at the signing of the Treaty (including the understanding of verbal promises) given the historical and cultural context of the time, with the content [and ambiguities] being construed and resolved in the favour of First Nations. (Aasen 1993:106)

This report is not a policy statement -- it is designed to provide general background information, and to assist in future policy development of an N.W.T First Nations government.

## 1.2 Methodology

This report is the result of only a few months of research and write-up time. For this reason it draws heavily on the published and unpublished works of others. Rene Fumoleau's definitive study *As Long As this Land Shall Last* is used extensively because it contains transcriptions of interviews with Dene Elders who had first and second hand knowledge of the Treaty 8 negotiations. Father Fumoleau based his work on extensive archival research -- neither the time, nor the resources, were available to duplicate his efforts. Transcripts from the Mackenzie Valley Pipeline Hearings and from the Paulette Case (Re Paulette's Application to file a Caveat [1973] W.W.R.97), are also used. These three sources provide extensive evidence from Elders. As Paulette and Aasen (1993:2) wrote:

Our prime source of information . . . lies in the memories of our Elders, whose knowledge includes an oral tradition that goes back into millennium of time. Some of our elders have first hand knowledge of the making of Treaty 8, at Smith's Landing, 1899, and at Fort Resolution, 1900. The spirit and intent of the treaty is imprinted in the memories of Elders in the Treaty 8 area.

Richard Price (1991:49) writes how important verbal promises were to the native signatories of Treaty 8, and detailed how history was passed on:

The spoken word of the commissioners during the treaty negotiations were much more important to the Indians than the written document.

The Indian leaders were aware of the need for a record of the agreement.

Traditionally, this involved understanding what was said and memorizing it. This, in turn, was orally passed on to those who did not attend the negotiations and to successive generations.

Justice Morrow gave strong credence to Dene historical accounts of Treaty negotiations:

These witnesses for the most part very old men and women, one of them 101 years old, were dignified and showed that they were and had been persons of strong character and leaders in their respective communities. . . **There is no doubt in my**

**mind that their testimony was the truth and represented their best memory of what to them at the time must have been an important event. It is fortunate indeed that their stories are now preserved.** (Morrow in Morse 1989:306).

Commission reports also documented what Indian people have thought about treaty issues. Although biased by non-natives with vested interests, they were useful information sources. Reports from the Nelson Commission of 1956 (which inquired "generally into all matters arising out of the unfulfilled provisions of Treaty 8 and 11 as they apply to the Indians of the Mackenzie District") and N.K. Ogden's (1968) report which surveyed Treaty 8 and 11 bands and reported on land entitlement, areas where reserves could be established, and alternatives to establishing reserves, are reviewed.

Indian Association of Alberta, Treaty and Aboriginal Rights Research (TARR), materials, although focused on Alberta, provide principles and analyses useful for understanding the N.W.T. case. The B.C. Treaty 8 Tribal Association's *Preliminary Treaty Review Report* (Aasen 1993) refers extensively to literature from a B.C perspective. Some of this information, particularly the summary of the Paulette case, is important for the N.W.T.. This report has also shown that many generalizations on the Indian understanding of Treaty 8 can be applied cross-regionally (Aasen 1993:107).

The entire report is divided into four sections. The first, presented here, is the context of the report and methodology used. The second section details the Dene understanding of Treaty 8 as a Peace and Friendship Treaty. This section argues that the Dene signatories to Treaty 8, rather than being confused in the negotiations because of the problems of discourse, understood what they negotiated, had particular demands to be met, and were shrewd participants in the process. Also discussed here is the Dene's understanding of the land extinguishment clause. The third section examines the Dene understanding of specific promises made in Treaty 8 and documents some of the violations of these promises (after Aasen 1993). The fourth section reveals that the Dene understanding of Treaty 8 finds support in the principles of International law. It provides documented support for the position put forward by the N.W.T. Treaty 8 chiefs.

The bolded sections throughout this report, in both textual references and oral testimony, were added for emphasis and ease of reading. They should not be read as either the author's or speaker's emphasis.

### 1.3 Acknowledgements

I would like to thank the Chiefs of B.C. Treaty 8 Tribal Association, and Peter Havlik (TARR), who in the true spirit of cooperation, allowed me to use photocopied materials on Treaty 8 collected while I was in their employ. This material was used extensively in this report. I would also like to thank Susan Quirk, Treaty Land Entitlement Researcher at N'dilo, for assistance in soliciting interviews. The Chief and Band members at N'dilo made me feel welcome and I thank them for their hospitality. Ingrid Kritsch generously provided accommodation and companionship during my stays in Yellowknife. Gloria Hammermeister, researcher for the Grand Council of Treaty 8, and Shirleen Smith, University of Alberta, provided additional support while I was working in Edmonton. Francois Paulette is thanked for his valued insights and direction through all stages of the writing of this report.

## 2.0 THE INDIAN UNDERSTANDING OF TREATY 8 IN THE N.W.T.

This section highlights a brief history of the signing of Treaty 8, and the general understanding of its provisions. Specific aspects of the Dene understanding of Treaty 8 will be contained in the following section. Here I will give a brief summary of events that lead to the signing of the Treaty and will contrast two versions of the agreement, the government version and the Dene version of Treaty 8.

### 2.1 Historical Background to Treaty 8<sup>1</sup>

Fumoleau (1976:47-48) provides the historical circumstances that predated the signing of Treaty 8 in the N.W.T.. (A chronology of events has been provided in this report if more detailed information is required.) He points out that by the end of 1890, 860 prospectors had reached Fort Smith. Many stopped their rush to the Klondike when they heard that gold existed at the Eastern end of Great Slave Lake, and prospecting flourished there. Fumoleau writes:

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<sup>1</sup> This also appears in Paulette and Aasen (1993:5-7)



All contemporary records indicate that this increased mining activity on the shores of Great Slave Lake was an important reason for including the area within the boundary of Treaty 8. (Fumoleau 1976:49)

The goal of the government, around this time was to extinguish Indian land title in the area, to develop mechanisms to control both the Native and white populations, to ensure "peaceful settlement and to promote harmonious relations and coexistence between Indians and non-Indians" (Fumoleau 1976:50).

The Treaty party reached Smith's Landing on July 15, 1899. The Commissioners' Report documents what Indians were promised during the 1899 signing of Treaty 8:

They all wanted as liberal, if not more liberal terms, than were granted to the Indians of the plains. Some expected to be fed by the Government after the making of treaty, and all asked for assistance in seasons of distress and urged that the old and indigent who were no longer able to hunt and trap and were consequently often in distress should be cared for by the Government. They requested that medicines be furnished. At Vermilion, Chipewyan and Smith's Landing, an earnest appeal was made for the services of a medical man. There was expressed at every point the fear that the making of the treaty would be followed by the curtailment of the hunting and fishing privileges, and many were impressed with the notion that the treaty would lead to taxation and enforced military service. They seemed desirous of securing educational advantages for their children, but stipulated that in the matter of schools there should be no interference with their religious beliefs.

We pointed out that the Government could not undertake to maintain Indians in idleness; that **the same means of earning a livelihood** would continue after the treaty as existed before it, and that the Indians would be expected to make use of them. We told them that the Government was always ready to give relief in cases of actual destitution, and that in seasons of distress they would without any special stipulation in the treaty receive such assistance as it was usual to give in order to prevent starvation among Indians in any part of Canada; and we stated that the attention of the Government would be called to the need of some special provision being made for assisting the old and indigent who were unable to work and dependent on charity for the means of sustaining life. We promised that supplies of medicines would be put in the charge of persons selected by the Government at different points, and would be distributed free to those of the Indians who might require them. We explained that it would be practically impossible for the Government to arrange for regular medical attendance upon Indians so widely scattered over such an extensive territory. We assured them, however, that the Government would always be ready to avail itself of any opportunity of affording medical service just as it provided that the physician



attached to the Commission should give free attendance to all Indians whom he might find in need of treatment as he passed through the country.

Our chief difficulty was the apprehension that the hunting and fishing privileges were to be curtailed. The provision in the treaty under which ammunition and twine is to be furnished went far in the direction of quieting the fears of the Indians, for they admitted that it would be unreasonable to furnish the means of hunting and fishing if laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood by such pursuits. But over and above the provision, we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that **they would be as free to hunt and fish after the treaty as they would be if they never entered into it.**

We assured them **that the treaty would not lead to any forced interference with their mode of life**, that it did not open the way to the imposition of any tax, and that there was no fear of enforced military service. (Report of the Commissioners 1899).

On the basis of their understanding of these promises 270 Chipewyans were treated on July 17, 1899. The following summer (1900), other groups, the Yellowknives, Dogrib, Slavey and Chipewyan Bands of Greater Slave Lake adhered to the Treaty at Fort Resolution.

## 2.2 Two Versions of Treaty 8

Chief Francois Paulette, Chief of the Fort Smith Indian Band, gave evidence to Justice Morrow at the Paulette case (Book 3, pp.154) which stated that there are **two versions of Treaty 8**:

Q. Have you ever seen a copy of what is Treaty Number 8?

A. The government original treaty I have seen.

A. Yes.

Q. In what sort of version have you seen it, in a pamphlet form or big pieces of paper?

A. In a pamphlet.

Q. Chief, I am showing you a pamphlet. Have you ever seen this before? Would you like to look (sic) at it, inside as well.

A. (WITNESS EXAMINES) Yes.

Q. What does it say on the outside cover?

A. "Treaty 8 made June 21st, 1899, and Adhesions, Reports, etc."

Q. Do you understand that to be a copy of the real Treaty 8 that was signed?

A. Not from the Indian version of it.

THE COURT: When you say "the Indian version" do you mean there is another written document that the Indians have or do you mean not the way it has been passed down to you?

A. That is not the way it has been passed down to me.

Q. Have you any doubt that is the document you referred to a moment ago when you said you had seen the government version, is that what you understand to be the government version?

A. Yes, this is the government version of it.

Fumoleau (1976:14-15) writes:

There is a dimension to documentation which for the first time has been recognized by Mr. Justice Morrow's judgement. This is the Indians' side of the story, which is only available through oral history. While the treaty commissioners wrote official reports based on their perceptions of events, it has now been established that the best source of information on the Indian treaties 'seems to be among long-time residents and the Indians in the N.W.T.'. The Honourable Mr. Justice Morrow, having listened throughout the summer of 1973 to testimonies from Indians and others who remembered treaty-making negotiations, concluded, "**There is no doubt in my mind that their testimony was the truth and represented their best memory of what to them at the time must have been an important event. It is fortunate indeed that their stories are now preserved.**" In a history of the treaties, the discussions among Indian chiefs themselves, or between them and treaty commissioners or Indian agents, can supply more valuable information than the actual text of the treaties. Indian people, and they alone, can describe their understanding and their expectations of the treaties, their intentions when they signed them, and the past and present significance of these treaties in their minds.

There are two versions of the Treaty 8. The **government version**, is recorded in both the Commissioners' Report (cited above) which describes the verbal promises made to the Indians at the time Treaty 8 was signed and the actual text of the Treaty 8 document that shows which of these promises were included in the treaty (Appendix 2). These government versions are not totally consistent. For example, the Commissioners' Report tells us that the Indians were concerned that "the treaty would lead to taxation and enforced military service." In response the Commissioners promised that "the treaty did not open the way to the imposition of any tax." But agreements about taxes or military service do not appear in the text of the Treaty 8. The **Dene version** represents the oral historical account of Treaty negotiations, as told by Dene participants in the treaty negotiations, and by their descendants, who have special knowledge of the events. The Dene version represents what was promised to the Indians during Treaty 8 negotiations, and what they understood their benefits to be.

The government version of the Treaty and the Indian version differ substantially. It is interesting to note that the commissioners report of the negotiations is closer to the Indian version of what was agreed to than the text of treaty. This lends support to the Indian interpretation of Treaty 8. Price has said that the difference between the Indian version of Treaty 8 and the document is the result of differences in the two group's main goals.

According to Price (1991:48), the main goals of the federal government in treaty making were:

1. To acquire legal title to western and northern lands for farming, railways, mining and other types of development;
2. To peacefully settle the west with . . . immigrant farmers;
3. To keep the costs of this westward expansion at a minimum, and in particular to avoid costly wars with Indian and Metis inhabitants;
4. To stop American expansion into Canada's western and northern territories, and to protect these territories; and
5. To respond, to some degree, to Indian requests for treaties and treaty benefits.

Accordingly, the government wrote provisions into Treaty 8 allowing for development and settlement and for title to Indian lands.

Richard Price (1991:48) summarizes the goals and wishes of Indian leaders when negotiating Treaty 8:

1. To ensure the physical survival of Indian nations;
2. To keep peaceful relations with the Canadian government through on-going relationships of equality and respect;
3. To affirm on-going cultural and spiritual survival as distinct Indian tribes and nations, by preserving distinctive traditions and institutions; and
4. To be able to make a transition to a new life by borrowing certain technologies, including the treaty promises involving educational, economic, health and other benefits. (Price 1991:48)

Price believes the Indian version of the treaty is substantially different from the written text of the treaty because signatories of the treaty entered into it with different expectations and views of the future. Brody (1981:68) points out that there is a structural problem in the treaty, in that the government solemnly assured that native participants would be able to continue their way of life unaltered forever. Their intentions were to open Indian lands to white settlement and to open the northern resources to exploitation (Brody 1988:68). If the government thought that Indian rights were to be temporary until suspended by development, they did not make that clear at the negotiations (Jackson 1979:1938). Native participants were guaranteed by the Commissioners **"that the treaty would not lead to any forced interference with their mode of life."** Was the government proceeding with treaty negotiations in good faith? This issue led to a major court case in 1973, when the Dene claimed that they had not extinguished title to their land.

### 2.3 The Paulette Case - The Land Extinguishment Issue

Nowhere in the *Report of Commissioners* is there a discussion on how land cession was explained to the people present at the negotiations, nor was there mention of how it was received by native participants. Surely, if the negotiations included such a discussion it would have merited comment by the commissioners. The text of Treaty 8, however, very clearly states:

AND WHEREAS, the said Commissioners have proceeded to negotiate a treaty with the Cree, Beaver, Chipewyan and other Indians, inhabiting the district hereinafter defined and described, and the same has been agreed upon and concluded by the respective bands at the dates mentioned hereunder, the said Indians **DO HEREBY CEDE, RELEASE, SURRENDER AND YIELD UP** to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors for ever, all their rights, titles and privileges whatsoever, the lands included within the following limits, that is to say:-

Commencing at the source of the main branch of the Red Deer River in Alberta, thence due west to the central range of the Rocky Mountains, thence northwesterly along the said range to the point where it intersects the 60th parallel of north latitude, thence east along said parallel to the point where it intersects Hay River, thence northeasterly down said river to the south shore of Great Slave Lake, thence along the said shore northwesterly (and including such rights to the islands in said lakes as the Indians mentioned in the treaty may possess), and thence easterly and northeasterly along the south shores of Christie's Bay and McLeod's Bay to old Fort Reliance near the mouth of Lockhart's River, thence southeasterly in a straight line to and including Black Lake, thence southwesterly up the stream from Cree Lake, thence including said lake southwesterly along the height of land between the Athabasca and Churchill Rivers to where it intersects the northern boundary of Treaty Six, and along the said boundary easterly, northerly and southwesterly, to the place of commencement.

AND, ALSO the said **Indian rights, titles and privileges whatsoever** to all other lands wherever situated in the **Northwest Territories**, British Columbia, or in any other portion of the Dominion of Canada.

**TO HAVE AND TO HOLD** the same to Her Majesty the Queen and Her successors for ever.

This, then, is the government's understanding of Treaty 8. How the government could require that Indians surrender all their rights, titles, and privileges to the land, while guaranteeing them the same privileges and rights, is a direct contradiction.

Johnny Jean Marie Beaulieu (Elder present when treaty was first paid), said of land cession:

Snuff said that he would agree with the treaty **as long as nothing changed for the Indians**, and all that was said was not changed either. Concerning the land he said that the White man was not to say that he had bought the land from the Indian with Treaty money. . . . Snuff said, "**You all heard him [Treaty Commissioner] we will**



stay on this land like we always did and as long as there is still Indians alive, our land will not be taken from us. All that we need for our livelihood, our hunting, fishing and trapping concerns the land." He addressed everyone and explained it again. They all agreed that the treaty was fine because it did not concern the land.

The whiteman said, "This money is for you to use for whatever you choose. As long as any of you live you will receive this money. He said again that as long as the sun shines and rivers flow you will have this treaty. Old man Snuff told the people then to sign the treaty so that the white man could not go back on his word. **Only then, old man Snuff said to the whiteman that because of the paper they had written on by which the whiteman was bonded, they would accept treaty money.** (in Fumoleau 1976:95)

While officials saw Treaty 8 as a means to extinguish land title, the Dene people of Treaty 8 believed that the Treaty guaranteed and recognized their rights to the land. This belief of the Dene people is supported by the Commissioners' statement that "the treaty would not lead to any forced interference with their mode of life." Mode of life, in this context, is not merely livelihood; as Snuff understood it, nothing would change for the Indians.

Anthropologist, June Helm (Paulette 1973:9:539,569 quoted later) believed that the European concept of land ownership "fee simple title", was unknown in 1899 and 1921 when Treaties 8 and 11 were signed. As Fumoleau (1976:212) notes, "the terms 'land', 'land ownership', 'land use', and 'use of natural resources' were frequently used interchangeably." The Dene, according to Fumoleau, did not in the past, differentiate between the right to use the land and its ownership.

In 1956, the Nelson Commission was sent to the Northwest Territories to investigate complaints related to Treaties 8 and 11. The Commission was "to inquire generally into all matters arising out of the unfilled provisions of Treaties 8 and 11 as they apply to the Indians of Mackenzie District" (Report of the Commission 1959:ii). The Nelson Commission organized meetings at all major centres (the total attendance at these meetings was estimated at 710 adult Indians and 43 non-Indians) (Report of the Commission 1959:3, PARC 1/1 11-5 1933-36). While the major task of the Commission was to investigate the possibility of establishing reserves, it collected evidence that provides important insight into the Indian understanding of livelihood rights and land ownership in 1956. The Nelson Commission Report contributed these observations on land cession issues:



At a number of the meetings Indians who claimed to have been present at the time when the treaties were signed stated that they definitely **did not recall hearing about the land entitlement in the Treaties**. They explained that poor interpreters were used and those interpreters urged the Indians to sign saying, "It will be good for you". It was emphasized that their Chiefs and head men had signed even though they **did not know** what the Treaties contained because the treaty parties included high government and religious officials whom the Indians trusted to look after their interests. When the Chairman pointed out that the Chiefs of each band, among others, had received copies of the Treaties the Indians replied that they were published in complicated English and they **could not understand them**.

It should be noted that although the Treaties were signed sixty and thirty-eight years ago respectively, very little change has been effected in the traditional mode of life of the Indians in the Mackenzie District, very few of the adults had received an elementary education and consequently were not able to appreciate the legal implications of the Treaties. **Indeed some bands expressed the view that since they had the right to hunt, fish and trap on all of the land in the Northwest Territories, the land belonged to the Indians.** The Commission found it impossible to make the Indians understand that it is possible to **separate mineral rights or hunting rights from the actual ownership of the land**. It must be remembered that until recently the Indians of this area have remain semi-nomadic hunters and trappers, living in the vicinity of small trading-post settlements for a few months of the year but roaming over vast tracts of land in search for food and fur-bearing animals for the remainder of the year. Under the circumstances, to suggest to them that they were entitled to a certain area of land was more or less meaningless for, due to their way of living, they had virtually no interest in using the land [for farming and agriculture?] and could not conceive that taking the land would benefit them. (Report of the Commission 1959:3 also PARC 1/1 11-5 3-36, Emphasis added.)

If the Indians did not separate land ownership from its use, then it becomes clear than when Indians were promised by the Commissioners that "the same means of earning a livelihood" would continue after the treaty and that "Indians would be as free to hunt, trap and fish after the treaty as they would be if they never entered into it" they would not have to worry about the land. Oral testimony cited throughout this report, however, indicates that at least some Indians knew that the government wanted the land.

The Chief said at that time if we take your money now, maybe this land, you'll take away this land from us. That is what was said then. Then the white man said, "No, we will not do that." Then we'll draw up a strong word, that is the exact word that he is saying. (Zep Casoway, Mackenzie Valley Pipeline Enquiry, Proceedings at Community Hearing, Fort Resolution, Vol. 31, October 7, 1975, pp. 2978-2979)

From these accounts, it appears that the Indians rejected land cession outright. Whatever the case in the past, today the Dene do understand the concept of fee simple title, and they still connect land use with its ownership. The Dene believe they own the land, and that they have never surrendered title.

Despite the promise made by the Commissioners that the Treaty would never lead "to forced interference with their mode of life", in 1973 the Dene found themselves in the position of having to go to court to prove that they had rights to their land.

On March 24, 1973, sixteen Indian chiefs of the Northwest Territories claimed an interest in an area comprising some 400,000 square miles of land located in the western portion of the Territories, and presented a caveat for registration under the Land Titles Act. (Fumoleau 1976:13)

The Caveat read:

TO THE REGISTRAR, Land Titles Office, Yellowknife, Northwest Territories, "Take Notice that we the Chief Francois Paulette (Fort Smith) . . . [there follow the names of the remaining 15 chiefs] . . . being residents of the Northwest Territories and members of Indian Bands in the Northwest Territories by virtue of Aboriginal Rights in all land in that tract of land in the Northwest Territories within the limits of the land described in Treaties 8 and 11 of 1899 and 1921, respectively, with adhesions of 1900 and 1922, between Her Most Gracious Majesty Queen Victoria and His Most Gracious Majesty King George V, respectively, and the Indian inhabitants of the land described in the said Treaties; which said tract of land maybe more particularly described as land included within the following limits: [Then follows a meets and bounds description cover the lands shown on the map, copy of which was attached to the document.] "but, SAVING AND EXCEPTING THERE FROM all lands for which a Certificate of Title in Fee Simple has been issued: FORBID the registration of any transfer affecting such land or the granting of a certificate of the title thereto except subject to the claims set forth. (Morrow in Morse 1989:305)

Paulette et. al.'s Application to File a Caveat ([1973] W.W.R.97.) was brought by the Indian Brotherhood of the Northwest Territories. The case argued that native title to the land still existed, and had not been extinguished by Treaties 8 and 11, because of the manner in which the treaties were negotiated. The Paulette case took evidence from many people who witnessed the signing of Treaties 8 and 11. (Much of the testimony is cited throughout this report.) Council for the Caveators presented their arguments and evidence under separate headings:

1. The Caveat area had been used and occupied by Athapaskan-speaking Indians from time immemorial.
2. When non-natives come into the area the land had been occupied by distinct groups of Indians who were organized in societies and who used the land as their forefathers had. The present day caveators were descended from these people.
3. An indigenous population have a legal title if they were in occupation of the land prior to colonial entry into the area.
4. Land rights have been confirmed or recognized by the *Royal Proclamation of 1763*, the *Imperial Order in Council of 1870* (transferring the Northwest Territories to Canada), the early *Dominion Lands Act*, and, by the Government actions related to Treaties 8 and 11.
5. Treaties 8 and 11 did not legally terminate Indian land rights because the people did not understand or agree with the terms that appeared in the written version of the treaties. They were bound only to mutually understood promises.

After considering these issues, and after listening to Elder testimony, Morrow wrote in his judgement:

In light of the evidence which was adduced during the present hearing it is perhaps of interest to quote H.A. Conroy, the Treaty 11 Commissioner . . .

They were very apt in asking questions, and here, as in all other posts where the treaty was signed, the questions asked and the difficulties encountered were much the same. The Indians seemed afraid, for one thing, that their liberty to hunt, and trap and fish would be taken away or curtailed, but were assured by me that this would not be the case.

While the important phrase in respect of surrender of land is in each case camouflaged to some extent by being included in one of the preambles, none the less the clear intention would seem to be to obtain from the Indians "all their rights, titles and privileges whatsoever, to the lands." The actual words are: "the Indians DO HEREBY CEDE, RELEASE, SURRENDER, AND YIELD UP". Read in conjunction with "all their rights, titles and privileges" it is about as complete and all embracing language as

can be imagined. If one was to stop there, of course, the Indians were left with nothing. (Morrow in Morse 1989:310-311)

In his role as "inquirer" under the Land Titles Act, Morrow felt that his only role was to ascertain if there was some chance that the Indians, as caveators, had a case. On September 6, 1973, after six months of legal process, the Honourable Mr. Justice William G. Morrow, in the Supreme Court of the Northwest Territories, concluded:

1. I am satisfied that those who signed the Caveat are present-day descendants of those distinct Indian groups who, organized in societies and using the land as their forefathers had done for centuries, have since time immemorial used the land embraced by the caveat as theirs.
2. I am satisfied that those same indigenous people as mentioned in (1) above are *prima facie* owners of the lands covered by the caveat - that they have what is known as aboriginal rights.
3. That there exists a clear constitutional obligation on the part of the Canadian Government to protect the legal rights of indigenous peoples in the area covered by the caveat.
4. That notwithstanding the language of the Treaties [8 and 11] there is sufficient doubt on the facts that aboriginal title was extinguished that such claims put forward by the caveators.
5. That the above purported claim for aboriginal rights constitutes an interest in the land which can be protected by caveat under the *Land Titles Act*. (Morrow in Morse 1989:314 and Fumoleau 1976:13)

Justice Morrow supported the Dene view that they "did not interpret the signing of the treaties as a surrender . . ." Malloch (1984:24) writes that this was a victory for the Dene:

A caveat ( a declaration of prior interest in the land) filed by Dene chiefs led to a landmark ruling in the courts which gave recognition to the continued existence of aboriginal rights in the Northwest Territories. Although the ruling was later overturned on a technicality in the higher courts, the substance of the ruling prevailed . . . . The position of the Dene gained support from the findings of the Mackenzie Valley Pipeline Inquiry, headed by Mr. Justice Thomas Berger, which recommended a ten year moratorium on the construction of the pipeline and the settlement of native land claims prior to any large-scale economic development programs in the north.

Russell (testifying before the Mackenzie Valley Pipeline Hearings Yellowknife, N.W.T. April 14, 1976, pp. 21864) said:

Canadian law, at least since the Calder case, has recognized the existence of aboriginal rights to lands held and occupied since time immemorial until such rights are extinguished by the sovereign Parliament. In the case of the Dene's aboriginal right to their homeland, there is great doubt as to whether that right has been extinguished. Although a literal reading of Treaties 8 and 11 indicates that the Indians did "cede, release, surrender, and yield up" to the Government of Canada . . . a great deal of evidence has been amassed . . . to support the contention that these treaties were, in effect, fraudulent, and that they cannot be taken seriously as an expression of agreement between two parties.

Justice Morrow's findings in the Caveat case that the facts cast sufficient doubt on whether aboriginal title was extinguished by treaty to justify a claim for title by the Indian as caveators was based on such evidence and this aspect of his judgement has not been overruled by the Court of Appeal.

In addition to detailing the fiduciary obligation of government, evidence presented at the Mackenzie Valley Pipeline Hearings supports the view that the Dene, in 1975, still connected land use with its ownership. One example is the testimony given by Mike Beaulieu, which shows that the Dene of Treaty 8 do not believe they have surrendered their land:

I understand the pipeline, if and when it is built, will be the biggest, the largest project ever undertaken in this country. It is to employ a huge amount of people and it is to run into billions of dollars. This much I understand of the project. Yet what the Canadian Government, the United States Government, the oil companies, the smaller businesses fail to understand, or refuse to admit, is this is Dene land. It always was and always will be. With these last words I have this to say. If there is a pipeline started before there is a just land settlement, I will personally be willing to lay my life down to protect this Dene land for our future generations and those unborn. Thank you. (Proceedings at Community Hearing, Fort Resolution. Vol. 31, October 7, 1975. pp. 2995-2996)

The land cession issue is well documented for the N.W.T. Treaty 8 region through the Paulette case. In the following section testimony from elders shows four possibilities: 1) The Dene signatories to Treaties 8 and 11 **did not** understand the document to be a cession of their land title or rights; 2) Some **could not** have understood the concept of land surrender or



"fee simple title" given their culture; 3) They **were not told** that the Treaty was a land surrender document; and 4) Some leaders understood that the government wanted the land, but **would not sign the treaty until they were guaranteed that nothing would change.**

If the document was not understood as a land surrender document, what did the Dene understand it to be, and what was their motivation for signing Treaty 8?

#### **2.4 The Dene Understanding of Treaty 8 as a Peace and Friendship Agreement**

Chief Joe Lockhart (Paulette 1973:204-216) testified on the importance of land sharing and how, in Dene culture, the people would never deny access to someone who needed food.

Q. Is it true to say that members of your band share all the land that your band is using?

A. Yes.

Q. Can you say why your people do not do what I have described about Yellowknife, that is, everybody has his own piece of land?

A. Like I said, we don't live in one place we are hunters and trappers, and we don't live in one place. Now if I want to go out trapping and hunting I would have to take my family along, and if I know this area where I stay and stay and living for two or three weeks and if I know this area is getting poor for hunting and fishing I have to move out again and in one year sometimes I move about four or five times. . . .

Q. Is it true to say that as hunter, fisherman, and trapper, because of the seasons, and so on, you have to keep moving at all times?

A. Yes, because we keep moving around.

Q. Do you think that one of the reasons that you are so generous to let members of other bands come into what is traditionally your hunting ground is that they will move away again anyway or you could go somewhere else and that you are flexible?

A. Yes, it is because we are hunters and trappers, so the member of other bands, they can come and hunt and trap in our areas, because we don't want to chase any other members away. . . .

Q. Is it recognized among the chiefs that various bands, that different bands use different areas of land?



A. No, we don't have a certain -- we all work together.

Q. Is it right or wrong to speak of the land used by the Snowdrift band. Does it mean anything to speak of the land used by the Snowdrift band to you?

A. Yes, I just told you that we don't chase anybody away, a white man or an Indian who comes to the area that is willing to do his hunting and fishing. If a person comes around and has a bunch of money, I am not going to take the money away from him, and when he is having dinner right there I am not going to steal a dinner away from him, and if he is willing to survive, let him survive.

This view of the land, and cooperative spirit, in the past had allowed non-natives to settle on Dene land. It is crucial to understand how Dene people perceived the idea of sharing the land to gain insight into why they signed Treaty 8 with whites.

Malloch (1984:14) relates that often there was fighting between different groups of Dene families and tribes. "This may have given rise to frequent meetings and conflicts between different small groups of Dene." Malloch also describes the conflict between the Chipewyans and Dogribs until 1923

when a peace agreement was reached between Edzo and Akaitcho, the Dogrib and Chipewyan leaders . . . . In the eyes of Dogrib and Chipewyan elders, the agreement between Edzo and Akaitcho constituted a binding agreement, one which people must still honour today. (Malloch 1984:15)

This type of agreement is important for understanding how Dene people understood Treaty 8. In the past the Dene had leaders who had meetings, and who reached agreements on issues of vital importance. The verbal promises spoken at these meetings were binding, well beyond the lifetime of the actual participants in the events.

Chief Francois Paulette, Fort Smith, gave evidence at the Paulette Case (1973:5:154) on the Indian Understanding of Treaty 8:

Q. Would you state whether, to the best of your knowledge and belief, based on what you have heard from your forefathers and the reputation in the tribe, whether or not the Indian people of Fort Smith have ever sold or surrendered their lands.

A. No lands have ever been surrendered or ceded in the first treaty. It was sort of a peace Treaty.

Q. On the basis of the reputation, the reputation of the tribe, have those lands ever been sold or surrendered in any manner.

A. No.

Upon examination by Mr. Brand Chief Paulette testified:

Q. Chief Paulette, you made reference to a peace treaty; when was that peace treaty, and what was done, and what lands did it cover?

A. No land was mentioned. **That peace treaty was with regard to whether the white people can come in without any conflict with the Indians and the Indians have no conflict with the white people.**

Chief Edward Sayine, Fort Resolution, (Paulette:3:182) gave evidence on the Indian understanding of Treaty 8 as follows:

Q. **Did the people at Fort Resolution ever sell their land to the government?**

A. No. . . .

Q. Have you ever heard people mention Treaty Number 8?

A. Yes

Q. What is your understanding of what Number 8 means to the people of Fort Resolution?

A. Treaty 8, and they are Indians, and those people are- it isn't like today - since 30 years they can talk and write good, and my son was here, and in those days at Treaty time they just give it to them and go, and they don't understand that, and they don't speak English, and they don't write, and today I read a bit, and I just get advice from the older chief, and my older people. . . .

Q. **When you spoke to the old people about Treaty 8 did they say what kind of treaty Treaty 8 was?**

A. **They say they got five dollars, treaty 8, they got five dollars from the government but not for the land, and he said, that is the day he signed the agreement for peace with the white man.** He told me last before I leave. He was the chief for 20 years, and his name is Peter Frieze, and he is 85, and I will bring him to you and he will talk.

Pierre Friezie gave background information in his testimony in the Paulette Case (1973:5:302-312) and stated what he understood about Treaty 8:

Q. Pierre Friezie, would you tell the Court how old you are?

A. Eighty-seven.

Q. Are you a Treaty Indian?

A. Yes.

Q. How long have you lived in Fort Resolution?

A. He was born here.

Q. Are you a member of the Fort Resolution Indian Band.

A. Yes. [Seeks permission to lead the witness.]

EXAMINATION BY MR. SUTTON CONTINUED

Q. Were you at one time Chief of the Fort Resolution Indian band?

A. Yes.

Q. How many years were you Chief of the Fort Resolution Band?

A. He was about twenty years as Chief but he hasn't been counting the years and doesn't know how to read and hasn't been counting the years.

Q. Were you in Fort Resolution when Treaty was paid the first time?

A. Yes, he was a young kid but he stills remembers well.

Q. Would you tell the Court what you remember about what happened at that time?

A. He says he can tell you what I heard then. **He was a kid at the time but he still remembers quite well what was said.**

Q. Would he tell the Court what sort of things were talked about at that time?

[Discussion about translation]

A. When the first Treaty party came in, there was a lot of people here and they brought in a lot of things. **They brought everything in, like nets, shells, flour, and they told the people they were going to help them out this way. So then the older people were saying we are not going to take that five dollars because they are giving things to us for nothing so they might be fooling us, so we won't take the money for nothing. So, he says, if they took the money they would help the Indian people out as long as the sun doesn't go back and the river does flow, the river doesn't flow back, they would be helping the Indian people.** So the Indian people told them that even though you tell us this, after so many years we don't know anything about it because we don't have a paper or anything. So this money they gave, they were told, **this was the money just to help the Indian people out and they would not be in each other's way, because the Indian people were poor and they wanted to help them out with medicine and things like that. . . .**

Q. Do you remember who the Chief was for Fort Resolution at the time of the first treaty?

A. He doesn't remember them all. He remembers down from little Buffalo River, the man who was named Vital, and from Rocher River and Resolution, his name was Snuff.

Q. Does he remember if there were any Dogrib people here at the time of the first Treaty?

A. He says everybody was here from Fort Rae, Yellowknife, Hay River and Resolution.

Q. Does he remember if there were people here from Snowdrift?

A. He said they were all here because they always came here in the summer time because there was no store in Yellowknife and Snowdrift and they all came here in the summer.

Q. Do you remember if, at any time of the first Treaty, there was any talk of land?

A. **No, and he never said you would have to go to Court later on, he says. They never said they would enforce game laws also, he says.**

Q. Was there any talk of the Indian people selling their land to the Government?

A. **No. The things they gave us was just to help us out because the Indian people were poor then. It was just to help us out that they gave us the five dollars and supplies that they gave us.**

[No more questions. Examined by Mr. Brand]

Q. Pierre Friezie, was there a piece of paper at that time, that the Treaty money was first paid?

A. He has never seen it.

Q. Did you see anyone sign any papers at that time in the summer?

A. No. . . .

Q. And the Treaty money that has been paid, is that because of the talk and the meeting with the Government people the first time the Treaty money was paid, and also because of the later Treaty?

A. He says the Indian people took the Treaty money the first time and then the second time because they told them it was just for helping them out and they would do this to them every year and just to help and so on and he has never seen anyone sign a piece of paper.

Q. Was there an interpreter who translated what the Government people were saying to your people?

A. He said there was an interpreter then because nobody knew how to speak English then and the Chief then was a guy named William Norm and then Pierre Mercredi.

Q. Did they speak good Chipewyan? Were you able to understand them well.

A. Yes, they spoke Chipewyan well.

Q. Did you hear the Government people promise that the Government would protect your people if you took the Treaty money?

A. No. The only promise was that they would, this way, live good.

Q. You have talked about two Treaties. Where was the first one talked about and where was the second one talked about.

A. He says down at the Bay, there. There was a kind of field where they had their tents.

Q. Is that true for both times?

A. Yes, it was a tent down there.

Q. In Fort Resolution?

A. Yes.

Q. Was there a chief of your band before the Government people came to talk about Treaty?

A. No, there was no chief then.

Q. After the Treaty was made was there a Chief by the name of Louison Ahthay?

A. He doesn't remember. It must have been before him, he says.

Q. Did you know then a person by the name of Oliver Ajjaricon?

A. Yes, he knows.

Q. Was he the leader of your people at that time?

A. He says no, he doesn't think he was the Chief.

Q. A person by the name of Vital you referred to, was his name Vital Lemouel?

A. Yes.

Q. And do you know what the full name of Snuff was?

A. He only knows him by Snuff.

Q. Was he a spokesman for the Yellowknives?

A. He says there was some Yellowknife, he doesn't know his name, they said Drygeese. . . .

THE WITNESS: He says there are only about two of them from Resolution here who remember this, Johnny Jean-Marie Beaulieu, who is very sick in bed, and then there is another old man from Smith, Antoine Beaulieu.

Mr. Brand: Was Antoine Beaulieu here at the time there was talk about the Treaty?

THE WITNESS: No, he wasn't here. He was from Smith. He later came to Resolution.

THE COURT: At the time, at either the first time they took the Treaty or the



time three years later, was there any talk about reserves?

**THE WITNESS:** No. All they told them, they never said anything was going to happen later on. All they said was to promise them they were going to love them.

From this testimony we can see that the Indians were concerned about getting something for nothing. At the time Pierre Friezie understood that the five dollars a year, supplies, and medicines were to help the Indians out. We also learn that nothing was said about the land, nor game laws, nor reserves. In taking treaty, Indians and settlers were "not to get in each other's way" and the Indians promised "to love" the newcomers. In Edward Sayine's words, mentioned above, "for peace with the white man."

Antoine Beaulieu (Paulette 1973:5:312-318) gives background information relevant to his testimony:

Q. Would you tell the Court how old you are?

A. I think it is eighty-nine, according to the Father.

Q. How long have you lived in Fort Resolution?

A. A long time. Around forty years. I don't know exactly.

Q. Where did you live before then?

A. Before that, it was **my country** in Fort Smith, that is where I lived.

Q. Were you in Fort Smith at the time of the first Treaty when the Indians were first paid Treaty money?

A. Yes.

He tells that court what he remembers about what happened at the time the first treaty was taken:

Q. Could you tell the Court what you remember of what first happened at that time?

A. He says he doesn't know how to read and he didn't understand and he couldn't tell you exactly everything that was said at that time.

Q. Could you tell us what you do remember?

A. What I understood then was that they won't stop us from killing anything and there won't be no law against anything, game and so on, living sources.

Q. Do you mean living off the land?

A. Yes.

Q. Do you remember of anything was said concerning the land at that time?

A. No, I didn't hear of anything.

Q. Was anything mentioned about reserves?

A. No, I didn't hear nothing about that.

Q. Was anything mentioned about white people coming to the north?

A. I didn't hear of any coming to the north. They were coming, but I didn't hear of any coming to the north at the time.

Q. Do you remember who was the Chief for the people of Fort Smith?

A. There was a chief by the name of Pierre Squirrel and a councillor was Michel Mandeville. . . .

Q. Was there any talk of the Indian people giving up their land to the Government? By taking Treaty?

A. There was no talk about that at all.

Q. Was there a Bay at Smith's Landing at that time [first treaty]?

A. Yes, the Hudson's Bay.

Q. Did your people at that time expect more white people to come?

A. Yes.

Q. Did you at that time mind or not like them coming, or did you not care?

A. We didn't mind. We didn't suppose they would bother us.

Q. . . . Did the Government talk about protecting your people if you took the Treaty money?

A. **They said if you take this money, you will never be in trouble or hard up or anything if you take this money, that is all.**

Q. How long was the meeting between your people and the government people?

A. He says he doesn't know how long but all they done was had some talk then paid out treaty.

Q. Do you know if they stayed overnight or whether they just did it in one day?

A. In one day, it was all over.

Q. Did your people want Pierre Squirrel to talk for them with Government people?

A. Yes, he was talking for his men and people.

From Antoine Beaulieu's testimony it is evident that he could not give us a verbatim account of the discussions because he did not understand English. He understood that non-native laws (game laws) did not apply to the Indian people. He maintained that no one discussed land surrender nor the reserve system. Antoine Beaulieu also testified that he did not recall any discussion of white people coming to Dene lands at the time of treaty, but he understood that later they would come. When examined by Mr. Brand, Antoine Beaulieu said he did not see any papers that were signed at the time the Treaty money was first paid, nor did he see anyone sign papers. This is consistent with the testimony given by Peter Friezie.

Some Dene people knew more whites would be coming into the country, but the Dene believed newcomers would not have a negative impact on them. An important part of Antoine Beaulieu's statement is that the money was to help out Indian people in times of trouble.

Some elements of the Indian understanding of Treaty 8 have been recorded by anthropologists in interviews with Dene Elders. A particularly good summary of the Indian understanding of Treaty 8 and Treaty promises is given by Pierre Smallnose Drygeese (born 1888 who was interviewed by anthropologist Beryl Gillespie in 1968):

The agent said, "I think you don't know about this Treaty but this Treaty **means to**

**make friends, Indians and whitemen**, because later on there will be lots of people, whitemen, coming to your country and then you will be friends with them, be no enemies. **This does not mean to talk about anything forbidden, or anything like that; we won't stop you from hunting or nothing. As long as the sun rises and the river does not turn back this talk will be forever; there will be no fighting and nothing forbidden.**" - that's what they told them. They gave money just to make friends, just like one; that's all they mentioned in the first place. (in Fumoleau 1976:96)

One of the most complete accounts of the signing of Treaty 8, which shows that the treaty was a Peace and Friendship Treaty, is Susie (Joseph) Abel's account. Susie Abel was present at the Treaty negotiations and described the events leading up to the treaty as well as the Treaty's negotiation. This detailed account was recorded by anthropologist June Helm in 1971:

Finally the Agent showed up. They came up the sny, crossing the Bay. We had never seen a scow before - It was just like a little rocky island, it was so big. And when it got closer we saw red cloth - we know now that it was a flag, but did not know it then. They were getting closer, closer. Now we saw the big oars splashing water once in a while, one oar for one man. . . .

We had never seen a boat with no head. The sun was just about setting. After sun down they landed. . . .

The Agent walked up to meet us. He said, "I'm pleased to see all this bunch. It is late in the season. I was afraid everyone had left for the bush. **On the Queen's word I have come with money. I'm going to issue the money to all the Indians.** I am pleased that lots of people are still here." And one of the Indian leaders told the Agent, "You are glad to meet us. But everyone is pretty near starving. We were supposed to leave the fort. But we heard you were coming, so we've been waiting without food." The Agent said, "**I haven't got much food, but I brought some flour and bacon. I can give you some flour and bacon for the kids and old people.** It is late now, so we won't talk more. But I will give you 700 pounds of flour and 300 pounds of bacon. You can divide it among yourselves."

So the Indians took the flour. One of the leaders gave it out to all the people. They opened the sacks and gave a cup to every person. In those days we didn't have many dishes. So some guys took their shirts off and they took the flour in their shirts. But some, even in their camp had nothing to put the flour in. Some women - in those days wore aprons - They picked up their aprons to put the flour in. Someone cut the bacon. They threw it in the apron on top of the flour. When they had given out all the flour

and bacon, everyone was so happy, they were frying bacon and cooking bannock. You could hardly see all night from the smoke of the frying bacon.

The Agent said, **"Tomorrow, I am going to put up a tent. We will have a meeting before I give money.** Everyone - old, young - has got to come and hear what is said." So the Indians went back to their tents and the Agent went back to the scow. In the scow there was a place to sleep. . . .

In the morning, the Agent put up a tent. We had never seen a one-pole tent before. . . . Everyone went over to listen. . . . We sat on the ground on one side. The Treaty Commissioner said, **"We don't come to make trouble. We come for peace and to talk about money. We come for peace. From now on, there will be lots of White men. So if the White men come you will treat them just like your own brothers. And the White men if they see a poor Indian in trouble, they will help, just like he was their own brother. That is why we came here. There will be lots of Metis . . . later on. From now on White men and Indians are going to be like one family. That is why I tell you this. We have never talked about this before and you will remember it. That is why I brought this money."**

An Indian by the name of N'doah said, "Funny, this is the first time we have gotten free money." None of the Indians liked the way N'doah sounded (they were afraid he would make trouble). So they said that they were going to take another man to speak. So they took old Drygeese for the Indians. The old people said, "Andare Wetah (Old Drygeese) is the man to talk for us." And Andare Wetah said, " All right, I will talk for you."

Drygeese said, **"This money never happened before, so we want to know if something will be changed later. If it is going to change, if you want to change our lives, then it is no use taking treaty because without treaty we are making a living for ourselves and our families."**

The Agent said, **"We are not looking for trouble. It will not change your life. We are just making peace between Whites and Indians - for them to treat each other well. And we do not want to change your hunting. If Whites should prospect, stake claims, that will not harm anyone. I have come here to issue this money, that is all."**

So Drygeese said, "All right, if you're going to give us money. But before you issue money I want you to sign what you said and let me have one copy of what you signed."

Big Michel, Michel Mandeville, was interpreter. He was a good interpreter.

Drygeese said, "We won't stop you from giving us treaty, but we are going to have a



meeting amongst ourselves, especially the old people, today. So if you want to give treaty, it will have to be tomorrow."

So everyone went home. The old people were talking amongst themselves. I [Susie Abel] didn't follow the old people, because I was just a young man, so I didn't know what they talked about.

The next day they came back to the tent for treaty. When they had all gathered, Drygeese spoke to the Agent, "Don't hide anything that I don't hear. Maybe later on you are going to stop us from hunting and trapping or chopping trees down or something. So tell me that truth. **I want to know before we take treaty.**" The Agent said, **"I do what I am told - give you fellows money. There will be no trouble for anybody. We will not stop anything."**

Drygeese said, "If that's the way it is, I want to tell you something. As you have said, 'As long as the world does not change, the sun does not change, the river does not change, we would like to have peace - if it is that way, we will take the money and I want you the Agent to sign that is the way it is going to be.' . . . "I would like a written promise from you to prove you are not taking our land away from us." . . . Then Chief Drygeese said, **"There will be no closed season on our land. There will be nothing said about the land. I may be the Chief, but I would like to hear what my people have to say."** All the people agreed.

The Agent said, "OK." So he signed the paper. So they gave us the money now. (in Fumoleau 1976:89-92)

Susie Abel's account reveals that:

1. The Commissioner said that they came for peace and to talk about money.
2. The money was the Commissioner's idea, and that the Commissioner was anxious for the Indians to take the money so that he could complete his job;
3. There were white people coming and the Dene were to keep peace with them;
4. The relationship between Indians and non-Indians was to be that of brothers within a family who help each other;
5. The money was given to remember the promises and to recognize this relationship;



6. The Dene were suspicious and wanted to know if anything would be changed -- if there would be changes then the Dene would not take the money;
7. The Dene, though hungry at the time the commissioners arrived, were "making a living." It does not appear that starvation was a factor in deciding to take treaty;
8. The Agent promised that nothing in life would change, that hunting would not be affected, nor trapping, nor would there be closed seasons on the land. That nothing would be said about the land. The Commissioner also promised that logging would not be conducted. In exchange the Dene were not to bother prospectors.
9. The interpreter was competent, and that the Indians wanted to discuss the terms of the treaty among themselves.
10. The Dene wanted peace with the newcomers.
11. On the basis of their understanding that nothing would change because of Treaty 8, the Dene took the Treaty money.

Fumoleau (1976:96) writes of the purpose behind the treaty:

It is clear that the Indians signed the Treaty to create a spirit of friendship with the newcomers. It was as Susie Abel recalls, just "**for future relationship with the White people.**"

Fumoleau (1976:100) writes of the terms of Treaty 8 signed in 1899:

The Treaty was seen by the Indians as a friendship pact, which would permit peaceful settlement of the country; . . . However, there were certain basic assurances which they wanted from the Government: freedom to hunt, trap, and fish and move freely. When promises were given that these would be protected, the Indians accepted government assistance, satisfied that their livelihood and that of their children would not be endangered.

Fumoleau (1976:211) writes of Treaty 11 (1921) that:

For over 100 years the Northern Indians had been able to help the newcomers to their country. They welcome and assisted the white man and trained him to survive and adjust to northern conditions . . . They saw the white man's treaty as his way of offering them his help and friendship. They were willing to share the land with him in the manner prescribed by their tradition and culture. The two races would live side by side in the North, embarking on **a common future**.

The government stressed that the treaty document was a Peace and Friendship Treaty; in this aspect all versions of the negotiations are consistent:

AND WHEREAS, the said Indians have been notified and informed by Her Majesty's said Commission that it is Her desire to open for settlement, immigration, trade, travel, mining, lumbering, and such purposes as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract, **and to make a treaty, and arrange with them, so that there may be peace and good will between them and Her Majesty's other subjects**, and that Her Indian people may know and be assured of what allowances they are to count upon and receive from Her Majesty's bounty and benevolence.

And the undersigned Cree, Beaver, Chipewyan and other Indian Chiefs and Headmen, on their own behalf and on behalf of all the Indians whom they represent, **DO HEREBY SOLEMNLY PROMISE and engage to strictly observe this Treaty, and also to conduct and behave themselves as good and loyal subjects of Her Majesty the Queen.**

**THEY PROMISE AND ENGAGE** that they will, in all respects, obey **and abide by the law; that they will maintain peace between each other, and between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians, half-breeds or whites**, this year inhabiting and hereafter to inhabit any part of the said ceded territory; and that **they will not molest the person or property of any inhabitants of such ceded tract, or of any other district or country, or interfere with or trouble any person passing or travelling through the said tract or any part thereof, and that they will assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this Treaty or infringing the law in force in the country so ceded.**

Dr. Bourget's (an Indian agent of the Great Slave Lake agency at Fort Resolution) Report (1923) documents how the Treaty was understood by Department bureaucrats and sheds some light on the government's opinion on land ownership. Bourget's Report supports the position that Treaty 8 is a peace and friendship treaty:

The Treaty that the Government passed with the Indians was intended, first in the Western provinces and later in the N.W.T., to avoid any trouble and wars between whites and Indians. Instead of simply taking possession of arable land and provoking the Indians' tempers when the white man came to settle, the Government preferred making a "treaty" with the bands who inhabited the parts of the country. It would recognize these as owners, without legal title, but as first occupants of the lands in these regions.

With this "treaty" the Government asked the Indians to accept the whites as their neighbours without bothering them. Under this agreement the government bought, so to say, the country. Meanwhile, instead of one whole payment the Indians would be payed every year until their race would die out. . . . In Fort Resolution, the "treaty" was signed in 1900 with three bands and, in 1921, for the remainder of the Mackenzie district . . . . (in Fumoleau 1976:350-351)

It is evident from testimony of Elders who were present at the signing of Treaty 8, that Dene chiefs, like Drygeese and Squirrel, had a firm and consistent understanding of what was discussed and of what was agreed to. Until now, the Dene have often been depicted as giving up their land because they did not understand, were tricked, or because there were problems of discourse.

## 2.5 Problems of Discourse

This section discusses problems of discourse -- the communication problems and misunderstandings that occur when two vastly different cultures meet. This segment will discuss whether the Dene peoples of the Northwest Territories understood the terms and the significance of Treaty 8. The section will also explore the questions of whether the two parties to the treaty were on "equal footing" and whether Treaty 8 was "an expression of agreement between two parties."

Fumoleau (1976:19) writes on problems of discourse:

Many words of the treaty text, their meaning and their consequences, were beyond the comprehension of the northern Indian. Even if the terms had been correctly translated and presented by the interpreters, the Indian was not prepared, culturally, economically or politically, to understand the complex economics and politics underlying the Government's solicitation of his signature. The Indian people did know that they could not stop the white people from moving into their territory, and in their minds the treaties primarily guaranteed their freedom to continue their traditional life style, and

to exchange mutual assistance and friendship with the newcomers. **By Treaties 8 and 11, the Canadian Government intended to extinguish the Indian title to the immense Athabasca-Mackenzie District.** The Indian people intended to sign friendship treaties. The tomahawk and the wigwam, the army officer and feather bonneted Indian depicted on the commemorative medal, bore little resemblance to northern conditions, to the Treaty Commissioners or to northern Indian chiefs. They are symbols of anachronism of the treaty itself. In spite of the hands clasped in agreement as depicted on the treaty medal, **it is very probable that the two parties neither understood each other nor agreed on what the treaty meant.**

Elsewhere Fumoleau (1976:145) writes that:

Nothing in their culture, history or experience had prepared the Indians for the role of treaty partner which was thrust upon them. No apprenticeship was encouraged, no recourse allowed.

Frank Norm (son of one of the interpreters) discusses problems of communication regarding the signing of the Treaty 8:

The treaty meeting was about 3 days and a half, I think, before they ever **resolved the treaty** . . . but even after all these discussions, when the treaty was first signed, it was **never explained to the people**, they thought they would just give them money and they would be satisfied . . . Treaty rights were not much explained to the people. . . (in Fumoleau 1976)

Johnny Tassie (interviewed by Robert Saiyine in 1972) also spoke of the problems of discourse:

We didn't know the Whiteman's papers and they used long words we couldn't understand. While Johnny Jean Marie Beaulieu stated: they talked nice to us in them days but nobody understood their language . . . (in Fumoleau 1976)

Erasmus and Sanders also wrote about how problems of discourse add to treaty-making problems:

It didn't help that the European interpretation of the treaty, often differing radically from the First Nation's interpretation of understanding, significantly altered the intent of the original agreement. For example, ownership of land in the Anglo-Canadian "fee-simple" sense of the title was foreign to the thinking and systems of First Nations. Land was revered as a mother from which life came, and was to be preserved for



future generations as it had been from time immemorial. Land was used for common benefit, with no individual having a right to any more of it than another. A nation's traditional hunting grounds were recognized by its neighbours as "belonging" to that nation, but this was different from the idea of private ownership. For the most part, the boundaries were not delineated. . . . First nations peoples, then and now, believe that they live *with* the land, not simply on it. (Erasmus and Sanders:4-5)

Expert witness June Helm's testimony in Paulette (1973:9:539,569), draws two different types of conclusions: those based on what the Indians actually said and, those formulated as the result of Helm's anthropological understanding of Dene culture. Helm testified:

I have drawn two kinds of conclusions: There are those directly communicated to me by the Indians and those which in my understanding of their culture the Indians could or could not have understood. The complaint I heard prior to 1967 relating to the Treaty were that its provisions never had anything to do with the land. It was never mentioned by Indians that the land had anything to do with the Treaties. It was mentioned very frequently thereafter with expression that "we did not know, nobody told us we were giving away our land." "We would never have done it, had that been the case". Men said to me "I was at the Treaty, and I don't know anything about why the Chief was appointed". **So that, and I am sure that this is with complete honesty, the people have expressed shock at something new and unknown to them.** From what people have said to me, and I know some of these people pretty well, and I think it was not dissimulation, and this was indeed news to them. It was not understood before, and I understood in previous years, although I did not bring this up with them and I wish I had brought it up before now feeling a sense of responsibility, even in 1960, in reading the Treaty with others as well as myself, **how could anybody put in Athapaskan language through a Metis interpreter to monolingual Athapaskan hearers the concept of relinquishing ownership of land, I don't know, of a people who have never conceived of a bounded property which can be transferred from one group to another, I don't know how they would be able to comprehend the import translated from English into a language which does not have these concepts, and certainly in any sense that Anglo-Saxon jurisprudence would understand.** So this is an anthropological opinion and it has continued to puzzle me how any of them could possibly have understood this. I didn't think they could have. That is my judgement.

Later in her testimony:

. . . they were told that they would be able to hunt off the land and fish for ever, as long as the sun rises and the river doesn't stop running and "now they are interfering with our hunting". The other statement is "why did you sign this? What did they ask

you to do?" and the answer was that "we want to make sure that everything is going to be peaceful", . . . there will never be any trouble, and the Indians were agreeable that the the [sic] Indian people and the whites should never have any trouble and that is, you might say, the only positive reason the people thought the whites wanted them to sign. **They thought they would always be able to hunt and fish, and it turned out to be a misunderstanding.** (Helm 570-572).

The importance of Helm's testimony is two-fold. First, Helm says that Euro-Canadian concepts of land ownership could not have been understood by the Dene. More importantly Helm suggests that the people were not told about some aspects of the treaty. Perhaps the grass-roots membership may not have understood, but other oral historical accounts from treaty witnesses suggest that Indian leaders did understand the negotiations. As some Dene people began reading copies of the treaty document, people were probably shocked at the land surrender clause because the treaty commissioners guaranteed them that the land was not to be involved as an issue. Fumoleau writes:

It is not clear from the reports of the Treaty Commission how **well the terms of the Treaty were explained to the Indian, nor how much they understood.** (Fumoleau 1976:74)

An example of bad faith was revealed in the Paulette case when Fumoleau testified that the interpreter for Treaty 8 who saw a copy of the Treaty at Fort Chipewyan reported that it was altered after the negotiations:

I believe copies of Treaty Eight were sent to the Indian Chiefs after the Treaty was signed, because we have a letter from Pierre Mercredi, who was an interpreter at Fort Chipewyan and says that when he received a copy of the Treaty it wasn't the same as had been explained to the people of Fort Chipewyan the previous year and he was the interpreter. (Paulette 1973:15:893)

**This suggests that the people understood what they agreed to, but did not agree to what they signed.** Pierre Michel said that in one case, the interpreter did not want them to sign the treaty. One wonders if perhaps he could understand but could not communicate some of the concepts. Or perhaps the interpreter did not believe the government would act in good faith.

The interpreter had tried very hard for us not to sign the treaty, but we have lost. The final decision came and all the priests and the RCMP gathered to witness the signing of the treaty. But to be honest, we have no idea what was written on the paper, since



we do not speak English nor write it. (interviewed by Elizabeth Petrovitch in 1971)

Erasmus and Sanders (1992:4-5) point to deception and bad-faith in treaty making:

When our people treated with another nation, each nation's interests, its pride, and its word were at stake. The word of the agreement, the treaty, was given in a very sacred way. And it was not easily broken.

So, it is quite amazing to our people - and it took them along time to realize - that they could sit with other people whose religious leaders were present, and who would be virtually lying to our people as they were executing the treaty.

That the Dene were working on a system of trust based on the sacredness of the spoken word, is revealed in Bishop Breynat's Affidavit which confirms all the claims made by the Dene:

I, Gabriel Breynat, Vicar Apostolic of Mackenzie, a resident of Fort Smith, in the North West Territories, DO CERTIFY as follows:

- 1.- I was present when the Treaty No. 8 was made at Fort Chipewyan and Fond du Lac, and signed it as witness in both places.
- 2.- At Fond du Lac, the parley having proved to be a failure, owing to the fact that the Chief and the Interpreter had come to a fight, in the presence of the Royal Commissioner, the Hon. Laird came to me, with tears in his eyes, and informed me that he had decided to pack up and go, very much regretting not to have succeeded in having the Treaty signed. I then offered myself to act as Interpreter. My offer was accepted.
- 3.- I persuaded the Caribou Eaters that it was to their benefit that they would accept to sign the Treaty and I gave them my word of honor that the promises made by the Royal Commissioner "although they were not actually included in the Treaty", would be kept by the Crown.
- 4.- At the request of Dr. D. C. Scott, then Deputy Superintendent of Indian Affairs, I joined the Royal Commission appointed to negotiate Treaty No. 11, with the Indians and tribes settled on the Mackenzie River, and, in his official Report, the Royal Commissioner gives me credit for the assistance actually given to him.
- 5.- Indeed I may say that I am responsible for the Treaty having been signed at several places, especially at Fort Simpson.

6.- As the text of Treaty No.8 and No.11, which had been brought from Ottawa, was not explicit enough to give satisfaction to the Indians, who were afraid to be treated as the Indians of the Prairie had been treated, the conditions of the North being altogether different, the following promises were made to the Indians by the Royal Commissioner, in the name of the Crown.

- (a) They were promised that nothing would be done or allowed to interfere with their way of living, as they were accustomed to and as their antecedents had done.
- (b) The old and destitute would always be taken care of, their future existence would be carefully studied and provided for, every effort would be made to improve their living conditions.
- (c) They were guaranteed that they would be protected, especially in their way of living as hunters and trappers, from white competition, they would not be prevented from hunting and fishing, as they had always done, so as to enable them to earn their own living and maintain their existence.

7.- It was only after the Royal Commissioner had recognized that the demands of the Indians were legitimate (sic), and had solemnly promised that such demands would be granted by the Crown, and also, after I had given my word of honor, with the Hudson's Bay Officials and the Free Traders and the Missionaries, who had the full confidence of the Indians, that they could fully rely on the promises made in the name of the Crown, that the Indians accepted and signed the Treaty.

THIS AFFIDAVIT made in duplicate at Ottawa in the Province of Ontario, this 26th day of November A. D. 1937.

In the past the Dene and other signatories to treaties have been viewed as naive, duped, or as in such difficult times that they were easily tempted into signing the treaty for cash and provisions. For example Fumoleau (1976:100) writes:

The haste of the Treaty Commissioner in securing signatures on a piece of paper removes any illusion that the Treaty was a contract signed by equal partners. How to characterize it remains a question, but the fact remains that the Government officials in Ottawa, who drafted the terms of the Treaty, had little knowledge or comprehension of Indians, or their way of life in the Northwest. Given the extreme physical hardship which the Indians had experienced through many winters, it is no wonder that the prospects of supply and cash was a deciding factor for them in accepting the Treaty. The Commissioners could afford some self-satisfaction since

they **had overcome resistance and dispelled suspicion wherever they encountered it . . . .**

Without doubt, the support of the missionaries and the presence of the North West Mounted Police encouraged the Indians to put faith in the Government representatives. . . . Expedient answers and facile promises were the substance of these negotiations

The view of treaty-making as an unfair contract between unequal partners, is echoed in the Oberle Task Force Report on Treaty 8:

It would be difficult, after examining the events surrounding the signing of Treaty 8 to come with any other conclusions than that the basis on which it was signed **was patently unfair**. One can base this assertion on a number of different factors.

**The two parties to the transaction were not on an equal footing.** They could not really communicate with one another, they had quite different understandings about land, the use of land, title to the land, the possibility of conveying land to others, and probably, quite different notions about making contracts. To the Indians the spoken word was sacred. Those negotiating the contract quite obviously did not share this view. The Indians they were dealing with were uneducated and, in most cases, illiterate. They were unable to read the Treaty and had to depend on translators for explanations of its contents. As noted before, a great deal of what was expressed was not recorded in the final text of the treaty.(Task Force 1986 25-26)

And later in the report:

To this must be added the fact [that] at the time of signing the Treaty, the Indians in the area were under considerable duress. They had a number of years of famine and had suffered badly from the diseases brought in by whites. . . . They did receive the assurance from the Treaty Commissioners that the government would take care of them in times of distress.

Another factor that indicates the degree to which the process was unfair was the fact that the Indians had no one there who was really acting on their behalf and trying to negotiate the best deal possible for them. . . . While it is true that the two missionaries accompanying the Commissioners' party did try to fulfil this role, even they were considerably misled by the promises made by the Commissioners.

Another aspect of the treaty signing that was unfair was the fact that **the treaty turned out to be a unilateral contract**. There was very little real room for negotiation on the part of the Indians who were basically faced with a "take it or leave it" proposition. **Generally the Commissioners took the line that the Indians could**

**lose their land with the benefits of treaty or lose their land without the benefits of a treaty.** (Task Force 1986: 27-28)

After close investigation of the oral historical information we can see that Dene leaders were not gullible, naive, or duped. The Indians were suspicious of Treaty 8:

Johnny Beaulieu said that his father who was instrumental in treaty negotiations: **"kept stalling because he didn't quite understand them** and they [the treaty party] asked what kind of person he was." Subsequently, the Treaty party dismissed him as chief because they found out he was a "halfbreed" (Johnny Beaulieu son of Pierre Beaulieu, interviewed by Marilyn Asheton-Smith in 1969 in Fumoleau 1976:92).

Not only do we see problems in how the Treaty party operated, but we see an attempt to really understand the terms of the treaty, which the Dene must have seen as a bilateral contract, not a unilateral one. Further, the commissioners did not make clear at the negotiations that the Indians would lose the land with or without the treaty. Testimony given by Zep Casoway at the Mackenzie Valley Pipeline Inquiry reconfirms that Indians were intent on **really understanding the provisions of the treaty before signing**, that they understood it as a bilateral contract, and that the land surrender (if the land was at stake) was non-negotiable:

THE INTERPRETER: He said I am glad to be here today, and he says our Maker made this land here and we are all here together and I am glad that we are able to shake hands together, the white and the natives all alike.

He says he can't say too much, he says the Chief is in town here but not present. I am just representing the Chief here now, but I would like to say, I have just one question to bring up here and that is all I have.

At first when the white man came into the country they paid out treaty and they said when they paid out treaty they said, "I give you this money for you to use." **The Chief said, "We don't know what it is all about, we don't know what that money is for so we cannot take it yet just now."**

Then we were told by the Bishop, the Missionary and the Bishop that this money will be a great help to you people, it is just to help you people out here.

**The Chief said at that time if we take your money now, maybe this land, you'll take away this land from us. That is what was said then. Then the white man said, "No, we will not do that." Then we'll draw up a strong word, that is the exact word that he is saying.**



He says, what I am saying now, said the whiteman then, that see that sun up there? As long as it is up there, he says, the word that I am -- what I am saying now will not be changed.

Then he said that as long as the water flowed and the river flowed that what I said I am saying now will not be changed. He says, since then, he says the sun never changed nor nothing changed and I am 65 years of age now and I make a living out of trapping and hunting. We are living on this earth here and it is a big help for my children in the future also and we are living well on it, not only me in here. That is all I have to say for now. Later on maybe if I think of anything I will speak up. Thank you. (Proceedings at Community Hearing, Fort Resolution. Vol. 31, October 7, 1975. pp. 2978-2979).

The assurance that nothing would change was also confirmed in Snuff's account from Fort Resolution. Justice Morrow wrote in his judgement:

When chief Snuff appeared to be holding out, according to Jean-Marie Beaulieu, who was there, he was told by the Treaty party: **"We will pay out the treaty to you here and it has no binding on your land, on country at all. It has nothing to do with the land."**

**Almost each Indian witness affirmed how the Indian representatives only signed after being reassured that, as one expressed it, "If you don't change anything, we will take treaty." (Morrow in Morse 1989:312)**

The position that the Dene's lives would not be interfered with is supported by Elder testimony, and is confirmed in the Commissioners' statement when he wrote "we assured them that nothing would interfere with their mode of life." It is further confirmed in Bishop Breynat's sworn affidavit when he wrote "They were promised that nothing would be done or allowed to interfere with their way of living as they were accustomed to, and as their antecedents had done".

There is nothing in the Elders oral historical information that indicates that starvation was a priority in signing the treaty but rather that aid could be useful in difficult times. Further, as Smith (1993:13) points out for Treaty 11 "the Dene were familiar with negotiating peace treaties . . . and thus Treaty 11 fit into the mould of peace treaties with other nations." Antoine Beaulieu reveals that those who became chiefs under treaty had been considered leaders of their people before this position became formalized:

Q. Did Chief Squirrel become a chief around the first Treaty money was paid?

A. Yes, that is the time he became a chief. He was paid Treaty.

Q. Had there been a position or title like a chief before the time the Treaty was paid?

A. Yes, he was sort of chief. . . . (Paulette 1973:5:312-318)

Testimony given by Chief Joe Lockhart in 1976, at the Mackenzie Valley Pipeline Inquiry, shows the faith that the Dene still had in the leaders that negotiated the treaty:

Treaty was first paid here in Fort Resolution and we were told that . . . Too bad, he said, if the chiefs, if the head chiefs from before if they were here now, he said, they would have been glad and they would have settled everything at once. (Proceedings at Community Hearing, Fort Resolution. Vol. 31, October 7, 1975. pp. 2986-2987)

## 2.6 Summary

To conclude, we see from all available evidence that the Dene were not naive or gullible. The Dene were suspicious of the commissioners' motives, sought clarification of the issues, which they discussed among themselves, and made specific demands that were to be met. They negotiated Treaty 8 in good faith and attempted to get the best deal that they could for themselves and successive generations. The Dene knew what they negotiated and were happy with the conditions of the Treaty as promised.

What also becomes obvious is that they did not sign the Treaty until they were absolutely sure that their conditions and terms would be met. The Dene's role in negotiating Treaty 8 was a fair one, and at the time they negotiated shrewdly and diplomatically. The process does seem unfair, and the two parties do seem on unequal footing, if the treaty transaction is viewed from a colonial perspective, and from a legalistic perspective. This view has been the dominant one in the past. It is time to try to understand how the Dene perceived the treaty negotiations, rather than trying to understand how the Dene perceived events.

If promises had been kept, if the government had acted in good faith, and implemented what it actually negotiated -- the Dene would be perceived as the shrewd, capable, master-negotiators that they were. **In exchange for formally accepting non-natives**



to their land (whites were in the region already, anyway) the Dene were to receive, --  
**FOREVER:**

1. annuities and rations,
2. medical care,
3. educational rights,
4. social assistance for those in need,
5. hunting, fishing and trapping guarantees,
6. farming and economic development rights,
6. guarantees of lands,
7. freedom from taxation and military service
8. other rights.

**ABOVE ALL** they received the guarantee that the Treaty would not interfere with their mode of life, that "nothing would be done or allowed to interfere with their way of living as they were accustomed to, and as their antecedents had done."

### **3.0 SPECIFIC UNDERSTANDINGS OF TREATY 8 PROVISIONS**

The following sections detail the spirit and intent of Treaty 8 as it applies to the Dene Case. Information has been taken from testimonies transcribed in the Paulette case and from the Mackenzie Pipeline Hearings. Additional information came from various interviews conducted by Elders and band members (Fumoleau 1976), from Fumoleau (1976), from archival information, and from other public documents.

#### **3.1 Dene Understanding of Annuities and Rations, Medals and Flags**

The Report of the Commissioners does not mention anything about the provisions made for medals, flags, or suits for chiefs. However, these provisions were written into the text of Treaty 8:

FURTHER, Her Majesty agrees that each Chief, after signing the treaty, shall receive a silver medal and a suitable flag, and next year, and every third year thereafter, each Chief and Headman shall receive a suitable suit of clothing.

The Oberle report had this to contribute to the understanding of Treaty 8, and the provisions of annuities, medals, and flags.:

The strong implication that Treaties **acknowledged that fact of Indian government, not only by the procedures that were followed, but also by the symbols that were employed.** The payments to Chiefs and Headmen of differential rates of annuities in perpetuity, and the provision of flags, medals and uniforms appear to amount to a "de facto:" and ceremonial recognition of indigenous governments. (Task Force 1986:36)

The nation to nation relationship between First nations and the Crown are depicted on the Treaty 8 medal which serves as a symbolic representation of the words "as long as the sun shines, the rivers flow, and the grass grows (for the medal graphically depicts a sun rising, and the grass growing and water flowing at the feet of a Chief and a Commissioner shaking hands). Because Treaty days renew and mark this important nation to nation relationship they have always been celebrated with some significance. One report which desires to mock Indians in their celebration of treaty days inadvertently reveals the importance of the event and how Indians, in 1933, viewed themselves and the process:

At Fort Resolution the numbers of Indians [taking treaty] is much larger [than at Fort Smith], and the treaty transaction is more animated and complicated . . . It would seem extraordinary that the Indians should come so far and take so much trouble to appear, for so small an amount of money, were it not for the fact that the occasion is regarded very much as an old home festival . . . There is glad reunion and jollification, endless pow-wow and pipe-smoking and feasting. . . .

The occasion for this meeting of the tribes is the paying off of treaty money. Each Indian who decides to co-operate with the Government receives annually the imposing sum of five dollars. Once each year, on Treaty Day, the Indian assemble to receive this Government dole. **It is not the money, however, that attracts them from far and near; it is the fact that later they can go back and say that they have been to Resolution where they appeared before the Whiteman as persons of consequence,** embroidered moccasins in their feet and red silk kerchiefs about their necks. (Ingstad in Fumoleau 1976:228)

That the Indians regarded the King in their own terms is supported by the 1933

account of Louise Rourke, wife of the Hudson's Bay Company Officer:

The most simple Indian still looks upon the "King in England" as a sort of "Great Chief", though in all probability he would not, to-day, express the idea in precisely that term; those who represent the King such as the Governor-General, he considers to be slightly lesser chief, and so on, all down the scale (in Fumoleau 1976:229).

Annuity payments are cash payment made yearly to the descendants of the signatories of Treaty 8. Amounts of money differ: chiefs receive twenty-five dollars a year, headmen fifteen dollars, and to every other Indian, twelve dollars. Frank Oberle writes in the Task Force Report that:

This is a very straight forward benefit and one about which there has been limited misunderstanding or complaint, with the possible exception of those who insist that they would not have sold their land for such a small amount. (Task Force 1986 A:21)

This is not a "straight forward" issue where there has been "limited misunderstanding" because, as Oberle fails to mention it involves land surrender. Johnny Jean Marie Beaulieu mentions that after Pierre Beaulieu was dismissed as Chief by the Treaty party because he was a "half-breed"

The chiefs agreed, Louison would speak for them all; they had previously discussed it amongst themselves and had chosen him to speak for them. Louison accepted to speak. He said [like Pierre] if nothing changed and the Indians would live as they had in the past, he'd agree to take the Treaty money. (in Fumoleau 1976:93)

As is apparent in Susie Abel's account (cited previously) the Dene understood that they were getting money to keep the peace. It is interesting to note that the Dene **did not ask for the money but "agreed to take it"** from the Agent who kept offering. Only after the Dene were sure that their terms were met did they agree to accept it. Possibly they were aware of the responsibility that came with accepting treaty payment; the people were definitely suspicious of accepting it. At the time the Indians were not dependent on money, as Susie Abel recounted:

That was the first time we saw money. Every person got \$12.00, Even the kids. [I] was a young man then, and in those days, if your dad was alive you were not the boss

and your Dad did all the trading - that is, collected the money in this case).

In those days, we never saw cash before, we just traded. We didn't know how to use it. So the trader told the Indians, "If you want to spend money in here, the money you got for your whole family, if you spend it here (in my store), I'm going to give you extra goods . . . ."

So they gave us treaty. And they picked up all the Chiefs and Councillors from all over. They put Drygeese as head Chief [that is, for the Dogrib Band], and next is Benaiyah, and the next is Sek'eglinan. These were the three Chiefs for Wuledeh [Yellowknife River Band]. (in Fumoleau 1976:89-92)

The Commissioners' Report does not state how annuities were explained to the signatories of Treaty 8 nor the government's view on how the Indians understood the clause. All we know of the government's point of view on the matter is what appears in the text of the Treaty 8:

And with a view to show the satisfaction of Her Majesty with the behaviours and good conduct of Her Indians, and in extinguishment of all their past claims, She hereby, through Her Commissioners, agrees to make **each Chief a present of thirty-two dollars** in cash, to each **Headman twenty-one dollars**, and to every other Indian of whatever age, of the families represented at the time and place of payment, **twelve dollars**.

Her Majesty also agrees that next year, and annually afterwards for ever, She will cause to be paid to the said Indians in cash, at suitable places and dates, of which the said Indians shall be duly notified, to **each Chief twenty-five dollars**, each Headman, not exceed four to a large Band and two to a small Band, **fifteen dollars**, and to every other Indian, of whatever age, **five dollars**, the same, unless there be some exceptional reason, to be paid only to heads of families for those belonging thereto.

The Treaty promises that there would be a one-time only "present" to **extinguish past claims**. The Treaty also promises that cash payments will be made each year after (forever). Clearly, the text of the treaty is in direct contradiction to the Indian understanding of what happened at the negotiations. As far as the Dene were concerned, the treaty promised that they could maintain their lives as they had before, that nothing "was binding on the country" that no changes would be made. Further, one wonders how the Indians would interpret the word "present" and the motivation of the Crown in expressing a cash payment as a "present" when the desire was to extinguish title. Since the issue of land cession has been dealt with

previously, it will not be reiterated here. It suffices to say that rather than surrendering rights, the Dene thought that Treaty 8 recognized rights. In coming to them with Treaty money, and in paying yearly, the government, through Treaty, was cementing a relationship of peace and brotherly love where nothing would change in the daily lives of the Dene.

Fumoleau (1976:213) points out that the literal translation of "treaty" is "money is distributed." He also points to the Indian agent as "the one distributing money," "July" as the "month where money is given out." He says that language reveals what people think and "their interpretation of life." He concludes that "money is distributed clearly shows what significance the treaty had for the Mackenzie Indians." He further writes that "although there is a large collection of [Dene] words used for 'trade', 'exchange', 'agreement', 'negotiations', not one tribe selected any of these to express its understanding, of 'treaty', or concepts related to it. He implies that the Dene's total concept of treaty is not as an agreement or negotiated deal but is significant only as "money distributed."

If one examines Fumoleau's evidence from a slightly different perspective it becomes clear that the treaty payment is symbolically important because it renews yearly the agreement made with the government. "Money is distributed" takes on a new meaning when viewed that way. Although by today's standards the annuity payment is small, Elders view the Treaty as sacred and the payment by extension as sacred. As the Oberle Task Force Report on Treaty 8 pointed out:

Minimal as the amount is, as noted earlier, it has an important symbolic value to treaty Indians and is taken by many as a symbol of the fact that their treaty with the government is still in effect. (Task Force 1986 A:21)

Louise Rourke, wife of the Hudson's Bay Company manager at Fort Chipewyan, noted that Treaty payments were **gifts** (privileges or gratuities) rather than **payments** (rights). Though she writes from a colonial perspective, she does capture the importance of Treaty Days:

The Treaty is a gift of money and goods to the natives, and seems to be in exchange for tribal rights which they have signed away. The money they receive amounts to five dollars for each child; it must cost some of them more than this amount to get to the Settlement from a long distance, for they are sometimes travelling days and



even weeks, to the place where Treaty is to be paid. Rations of flour, sugar, bacon, and tea, are part of the annual present to the Indian . . .

Whatever the merits or defects of the Treaty may be, there is little doubt that a vast section of the native people would be sorry to see its payment discontinued, not so much for any possible advantage accruing to themselves, but because the payment of Treaty is made an occasion for one of the most celebrated festivals in the Indian calendar. There are dancing and singing and the gathering of friends; sometimes the celebrations are continued for a fortnight. (in Fumoleau 1976:228-229)

Peter Frieze's testimony (Paulette Case 1973:5:302-312) shows that the treaty payment was important for renewing the relationship with the government and that the Indians believed that violating the treaty, withholding payment, or refusing payment, was very serious:

This happened and the following year [Treaty boycott at Fort Resolution], a lot of things that were said the first year, were gone already by then. About three years after that, they weren't living up to their words what they had promised. A lot of what they said were taken back and **the Indian people refused the money then**. So the older Indian people told them it was not a very long time since the Treaty was made but what they have said there was a lot of differences already, so if they were going to sign that paper for a longer period, they said they were lying. **It would be much more different, so they left the Treaty money for about two weeks, They wouldn't accept the money then**. Then there was Bishop Breynat. He said he was talking for the Indian people and he wanted the Indian people to take back the money as a separate Treaty again, and if it wasn't for that, there would be no Treaty money today. The guy's name was Card. That was one guy who received the money, and then, from then on, everything has been going down and down. . . . That is his story, he says.

Refusing Treaty payment is symbolic. By refusing payment, the Dene were threatening the foundation of their relationship with the government. They were breaking off diplomatic ties. If accepting treaty money is symbolically important then refusing it is also important.

Treaty Days were also times when the government consulted with Chiefs and heard their grievances. Treaty days as well as a **time of celebration were a time of meetings**.

Louise Rourke (1926) wrote of Treaty Days:

This is also a time for airing grievances of the past year, and the Indian Agent does his best to smooth out tangles and to patch up quarrels. Rations are then distributed and Treaty money paid. Also the Chief of a tribe gets a new suit of clothes from the



Government . . . . The Chief is invited to discuss affairs of his tribe with the Government party, and, if he has any grievances, efforts are made to set matters aright. (in Fumoleau 1976:229)

Fumoleau (1976:106) writes:

Every summer, representatives of the Department of Indian Affairs visited all the main trading posts for the distribution of annuities, groceries, ammunition, and fishnets. They listened to complaints, and advised the Indians that their problems would be referred to the Government in Ottawa. Usually a doctor and a few members of the NWMP accompanied the Treaty party and helped the Indians in any way they could. Treaty meetings became the highlight of summer gatherings, before the Indians left for winter hunting grounds.

**In this way, treaty days were a time of meetings between Dene leaders and their governmental counterparts.**

Peter Frieze recounts this of yearly payments:

Q. Apart from the time when there was a two-week delay, have your people in Fort Resolution always got Treaty money? Since the first time?

A. Since the first Treaty and until the second one, they were accepting the Treaty payment, the five dollars.

Q. How much later was the second supplementary Treaty than the first one?

A. Three years. And there they weren't keeping up their word and they said let's leave it, and that is the reason for the two week delay.

Q. But since then, have your people got treaty money every year.

A. Yes, he said they were trying to give us something and nothing now and pretty soon, there won't even be five dollars. It is no good anyway.

Q. But in the last seventy years, have your people got Treaty money every year?

A. Yes.

In Tom Unka's interview with Pierre Frise in 1972, a different scenario unfolds:

They brought it in and said that, "If you take Treaty you will be getting this every

year." That was our biggest mistake, because after that, they did not do it . . . (Pierre Frise in Fumoleau 1976:95)

Fumoleau (1976:113) writes:

By 1919 Treaty money was due to many Indians who had missed payments over the years. Some had not received their Treaty money for "2,4,10, even 18 years."

*The statement of Arrears in Annuities* in Treaty 8 shows the following numbers of people who had not received all of their payments:

|                    |             |
|--------------------|-------------|
| at Fort Chipewyan  | 127 Indians |
| at Fond du Lac     | 183 Indians |
| at Fort Smith      | 96 Indians  |
| at Fort Resolution | 95 Indians  |
| at Hay River       | 19 Indians  |

When John McLean, Assistant Deputy and Secretary of Indian Affairs became aware that the Government owed so much money to the Indians, he instructed Agent Card in Fort Smith:

It is not intended that you should show this list to the Indians or traders and lead them to understand that all these arrears are due and will be paid, but the list should be treated as a confidential document . . . When you have satisfied yourself of the correctness of the claim, you should pay 2 years' arrears in addition to the current year's annuity, paying the first the arrears for the latest years of absence. For example, a family absent 1914-1918 should be paid this year; annuity for 1919 and arrears for 1917 and 1918. You should also show in the remarks column "arrears are still due for . . . persons for 1914, 1915, and 1916. (Fumoleau 1976:113 ).

By this act, the government was breaching one of its outstanding obligations - the treaty annuity obligation. No one has yet documented the number of people who were, and are, owed "back-treaty" money. Unpaid annuity monies, calculated with interest, are probably quite substantial.

Although Treaty 8 does not expressly mention that rations are treaty rights, it was the custom for the Treaty party, and subsequent annuity payment representatives, to supply Treaty 8 groups with staple provisions - flour, salty bacon, tea, sugar, tobacco, blankets. Although viewed as "gifts" by non-natives these were seen by the Indians people as an intricate part of

Treaty rights. Susie Abel who was in Fort Resolution in 1901, noticed that the annuity had been reduced from the first treaty (apparently it was his understanding that each year the Indians would receive \$12.00, the amount given at first treaty):

The Agent told us: "Everyone gets \$5.00 from now on. The remaining \$7.00 we are going to put aside as treaty rations . . . for fishnets, flour, all kinds of ammunition, groceries, whatever you need . . . Every summer we're going to pay treaty and at the same time we're going to bring all this stuff for you to issue among yourselves. (interviewed by June Helm, 1971 in Fumoleau 1976:107)

Johnny Jean Marie Beaulieu reported that the Indian Agent tempted the people with rations and guaranteed that these would come every time the Treaty was paid:

After the discussion the Indian Agent said, "I got rations now down at the bay. You think that it is alright? **Rations are going to come every time! . . . After treaty is paid, the Head Chief is going to give rations to everybody.**" (in Fumoleau 1976:95)

Indian Agent Bourget's Report for 1923 indicates that from the government's perspective rations were an important part of the Treaty 8 rights:

The amount paid, five dollars per head, would represent the interest on a relatively high capital. In addition, medical care would be supplied by the Government along with hospitals whenever possible, schools, money to feed the elderly and orphans, nets, ammunition, tobacco, tea, flour, pork (bacon), clothes for elderly women, etc. the total in proportion to the population . . . (in Fumoleau 1976:350-351.)

Because the government promised to provide help in times of distress, it is often difficult to discern from the literature when "rations" were given as "gifts" and when they were given for assistance. According to Angus Beaulieu (interviewed by Roy Daniels in 1971):

The Treaty party promised a lot of things. **There would be no changes, there would be rations many things like this**, but Pierre said, "We have to have something signed saying we could have all this and there would be no changes, before we can take that treaty" (in Fumoleau 1976:92).

Fumoleau (1976:107) points out the novelty and excitement of receiving cash and goods "soon gave way to disillusionment **when it became clear that rations and money were the only return the Indians could expect on Government promises.**" Even the Treaty

right to rations would erode as items were discontinued one by one. For example in a Memorandum dated June 19th, 1954 to the Superintendent General, H.W. McGill, Deputy Superintendent discusses the tobacco ration:

With reference to your directions regarding the discontinuance of the tobacco issue for the Indians under Treaties 8 and 11, I may say that the Departmental officials are taking steps to give effect to this order.

In this connection I feel it my duty to respectfully call your attention to the fact that this issue was first made at the time of the signing of these two treaties, respectively, and has been continued yearly since, the distribution being made at the time of the payment of treaty annuities. **I felt certain that the abrupt termination of this issue will cause considerable discontent with the possibilities of other undesired consequences.**

**It may be pointed out that although the issue of tobacco is not covered by any treaty stipulation, there is no doubt that the Indians believe that it is and they will feel that the terms of the treaties are being violated.** (Parc 1/1 11-5)

As was written for the B.C. Treaty 8 case study:

If treaties are to be interpreted as the Indians naturally would have understood them, we may assume that anything that was customarily given at annuity payment time (for example a feast, rations etc.) would have been perceived as a Treaty right. (Aasen 1993:97)

Not receiving rations is a violation of treaty. Frank Norm in his interview with Gerald Sutton, June 29, 1972, had this to say about the erosion of Treaty rights and their violation:

Treaty day used to be a big day for the people . . . A long time ago in every settlement where the Treaty was paid it was a big day and everyone used to have lots of fun, good dance that night, or next night. When you think about treaty now, it's like putting a plug of chewing tobacco in your mouth and chewing it, and spitting it, that's just the way the Treaty is today. (in Fumoleau 1976:106)

Treaty payments, and Treaty Days, are symbolically important as an annual re-affirmation of the original treaty agreement. The symbolic importance has been highlighted by non-acceptance of annuities at times when Dene people felt that the government was not honouring other aspects of the treaty. Elders present at the treaty negotiations and today, believe that they should receive the same payments and rations that were given at the first

treaty. Some elders expressly believe the amount to be \$12 per year per person. There are some years when families did not receive their entitlements. Elders today say that the government has failed to honour the Treaty 8 agreement by not providing rations.

### 3.2 Treaty 8 Rights and Taxation and Military Service

After the negotiating sessions of Treaty 8, the Treaty Commissioners, recorded that:

There was expressed at every point the fear that the making of the treaty would be followed by the curtailment of the hunting and fishing privileges, and many were impressed with the notion that **the treaty would lead to taxation and enforced military service.**

We **assured them** that the treaty would not lead to any forced interference with their mode of life, **that it did not open the way to the imposition of any tax, and that there was no fear of enforced military service.**

Military exemption and tax exemption are not mentioned in the text of the actual Treaty 8 document nor is tax exemption mentioned in Frank Oberle's Task Force report:

... it would be difficult however, to misunderstand the intent of the above promises however. There was certainly a promise that they would not be subject to the draft. (Task Force 1986 Appendix A:20)

Narrowly viewed, the Indians were promised that the Treaty would not open the way to taxation or military service. This is one of the few statements that the Commissioners made which is not accompanied by a saving clause or statement. The Dene have understood in the past, and have today interpreted these promises to mean that they do not have to pay taxes - fur tax, property tax, hidden tax, personal income tax, or any other kind of tax. Nor do they believe they will ever have to serve in the army.

In a broad context, what the Indian negotiators seem to be worried about was being brought under the jurisdiction of institutions which were foreign to them. The Native negotiators seemed to have been concerned that by signing the treaty they would be brought under Her Majesty's and the government's jurisdiction as subjects and citizens. The Commissioners had to assure the Indian participants that "the treaty would not lead to any



forced interference with their mode of life." Assurances that nothing would interfere with their mode of life, that nothing would change, was believed by the Dene to mean that they could retain their own domestic life, including economies, political organizations, spiritual beliefs and other aspects.

That the promises of tax exemption, military service and autonomy, were left out of the text of Treaty 8 is not surprising because they conflict with the intent of the Treaty 8 document (which states that HER MAJESTY'S SUBJECTS, signed away forever, "all rights, titles and privileges."

That taxation and citizenship are connected concepts is seen in Ogden's report (1968), when he writes of a meeting at Fort Rae:

I understand your reasons for not wanting a reserve are that you are all Canadians the same as everybody else and that you want to co-operate with them and pay taxes the same as everybody else.

Although Ogden took statements by the Indians at Fort Rae on face value, the choice seems to have been reserves and but no taxes, taxes but no reserve. Seemingly, the people at Rae preferred to be taxed rather than put on reserves. (Reserves were not established in the N.W.T. treaty areas, and consequently, the Dene are not even, from the government's perspective, tax- exempt, like non-treaty groups that have reserves).

Dene people believe that their right to tax exemption has been violated because taxes are levied in their communities when, under Treaty 8, they have an explicit promise that taxation would not be imposed.

Historically, the Dene have protested against taxes. Dr. Bourget, Indian Agent Fort Resolution Agency, made this comment on taxation and the Treaty in 1930, and how this issue almost resulted in the Dene refusing treaty annuities.

At some posts the fur taxes collected last year brought severe complaints and some bands were near refusing their treaty altogether, claiming that the Traders were openly collecting taxes from them, for the Government, . . . The claim was made that the treaty brought them five dollars in the summer, and more was taken away from them in the winter, in fur taxes. (in Fumoleau 1976:390)

Promises made by the Commissioners have been violated. This position is reflected in Francois Paulette's address to the Constitutional Development Steering Committee at the



## Legislative Assembly:

And our First Nations are taxed. We have a very fundamental problem with that. . . . You have broken that law because Treaty 8 First Nations pay our tax. A 1% tax that you levied on treaty First Nations. . . . The N.W.T. Treaty 8 chiefs are trying to enter into a relationship that will be very different than the way we did business in the last 20, 30, 40 or more years. That relationship has to be very different. (Francois Paulette speaking to the Constitutional Development Steering Committee, Dec. 2, 1993)

### 3.3 The Dene Understanding of Livelihood Promises

Fumoleau (1976) provides very detailed information on game laws (for example, the Convention for the Protection of Migratory Birds in Canada and the United States), and describes violations of Treaty 8 livelihood promises as they apply to Fort Smith, Fort Resolution, and other treaty areas. Fumoleau recounts the effects of game preserves, and the territorial administration's role in establishing them, closed seasons on game, requirements for permits and licensing, and the multiple restrictions which led to a boycott of treaty in 1937 at Fort Resolution. Because livelihood issues are so well documented and Fumoleau's work so thorough, his efforts will not be duplicated here. Instead, attention will focus on what was promised regarding hunting, fishing and trapping at first treaty and how the Dene understood these promises.

"An Act for the Preservation of Game in the Unorganized Portion of the Northwest Territories of Canada" was given royal assent and finally came into force 1896. This act was very important in the 1899 treaty negotiations. This Act stated that it was illegal to kill, shoot at wound or molest in any way buffalo or bison until 1900. The Act also laid out concerns over other animals - moose, musk-oxen, deer, beaver, swan, ducks, and mink. In 1897, hunters at Smith's Landing had not heard of the restrictions but regulation about bison were seriously enforced from 1897 to 1899. (Fumoleau 1976:53).

In 1899, at first treaty, game laws and bison hunting were on everybody's mind. It was one of the main subjects discussed at the Treaty 8 negotiations, and was an area of dissension. Antoine Beaulieu testified at the Paulette case that people knew that the government wanted to restrict the Dene way of life:

Q. Do you remember if there was anything about hunting buffalo?

A. He says he doesn't remember. They didn't tell us how long we were not to kill them and it was a fearful thing to us at the time. We were afraid to kill them. It was just as if we were afraid to kill buffalo at that time but they never told us how long not to kill them. (Paulette 1973:5:312-318)

He also mentions that the Dene signatories of Treaty 8 were given shells and nets to support their way of life:

Q. When your go hunting, fishing and trapping, do they ever go in this year into what is now Alberta?

A. Yes, we went into any places at all, even in the Park.

Q. Is that true now and was it at the time the Treaty was signed?

A. Yes.

Q. And was it true since the first Treaty was paid, until now, all the time?

A. Yes.

Q. Were your people, at the time the Treaty was first paid, given things or food?

A. Yes we got food. They call it rations then.

Q. Did you get any shells or nets?

A. Yes.

Q. Did the Government people tell you that you would get more shells and nets?

A. No, I don't remember that, same thing. (Antoine Beaulieu 1973:5:312-318)

Snuff is reported to have understood that by taking treaty there would be no closed seasons on game and fur bearing animals and that this was a non-negotiable aspect of the Treaty 8:

**That it would not be closed to the Indians as long as the earth lasts.** And if the White man agreed, the treaty would be made, otherwise there would be no money given out. We did not ask for money. (Johnny Jean Marie Beaulieu in Fumoleau 1976:95)

Johnny Jean Marie Beaulieu reported that the land which supporting hunting was also non-negotiable and that hunting rights were to last forever:

... the Indian Agent said, "As Long as the sun shines and the river flows this is **your land to hunt on forever** . . . This land is yours. "If this is so, we will take the treaty," the chiefs said. (in Fumoleau 1976:97)

Henri (Honre) Drygeese, son of Chief Drygeese who negotiated the Treaty, said this of hunting, fishing and trapping rights in an interview with Antoine Liske in 1972:

Chief Drygeese said that, **my people will continue to hunt, trap and fish as it was before, there will be no regulations for my people.** If you take my word, only then I will accept the treaty . . ." (in Fumoleau 1976:97).

Pierre Michel, interviewed in 1971 by Elizabeth Petrovitch, said that Chief Drygeese was firm about wildlife restrictions. Chief Drygeese said:

The Great Slave Lake belongs to my people as well as to any Native who stays on this land. I speak not for myself but for all the people here and also for those who are Natives of this land. **In the future, you will not put any regulations against Wildlife.** These things belong to my people. They depend on them for food and clothing; **you will not take it away from my people. What I say now will remain as it is. There will be no changes in what I say even if I will not be around in the next ten years or so.** (in Fumoleau 1976:97)

Johnny Jean-Marie Beaulieu's testimony in the Paulette case (5:318-330) gives a very detailed account of what happened at Fort Resolution at the time of first treaty, and how this was understood by the people there. He also tells how, five years later, the government broke the treaty by restricting caribou hunting.

Q: Johnny Jean Marie Beaulieu, would you tell us how old you are?

A. I am eighty-six years old now and I will be eighty-seven in November.

Q. Have you always lived in Fort Resolution?

A. Yes.

Q. And were you in Fort Resolution when treaty was first paid at Fort Resolution?

A. Yes.

Q. Would you tell us what you can remember about what happened at that time?

A. Yes, it is all right. **I will tell you because I seen it.** We heard Treaty was going to be paid and I was sitting by an old man there and I said lets go over to the Treaty party because Treaty is going to be paid now. . . .

A. And this old man and I, he took his pipe. He said let us go now, and maybe he will have something to say there and we went on to the Treaty party. We could observe a flag and went in that direction. When we arrived there, they told this old man "Sit down here, at this corner of the table" and he sat down there. They told him that he will be the Chief. He is selected as Chief, and that is what he was told then, that he was selected as Chief before he even come.

Q. I see.

A. Then he said "How many Chiefs are we going to have here?" He said "You say I am going to be Chief here now, but I don't know yet. **It all depends on what goes on here now.** You tell me I am going to be Chief here". They also said that Snuff is going to be Chief and also Drygeese. That is what was said then. "Now that you are Chief, you will have to talk for your people", he was told. He said "Yes, that is what I came here for. It is all right." He said, "Why did you come here to pay out Treaty? Is there anybody in the crowd here asked for that money?" He said "Nobody asked for that money but your people are poor and you have families to help our during the winter months. We are giving you this money." **He says "That is right, then, but when you paid out Treaty in Fort Smith, you put closed season on buffalo and it is affecting us here also. Why didn't you tell us about it first?"**

MR. SUTTON: Yes.

A. "That is all right, we are going to pay the Treaty here, **but the closed season on buffalo has nothing to do with our people here,**" we were told. "This is our country, our land, and just because you give us money, we don't want you people to forbid us from killing anything, any game." He said "It is true but if you do not let them people in Fort Smith kill the buffalo, we are not going to take treaty here." That is what the old man said, the Chief said. "I am only spokesman," he said, I am not the boss yet. I am only told what to say," said he.

THE INTERPRETER: I think I made an error. The last sentence there, the Chief told the treaty party, and the Treaty party said "I am not the boss. I am just come here and I am told". It is vice-versa, it is the Government people said "I am told to say this."

THE COURT: All right.

## EXAMINATION BY MR. SUTTON CONTINUED:

A. The Chief said this, "Bring the boss here and we will have a talk face to face here." He says "I am told to come down here and pay out this Treaty and that is why I am here now. Now, will your people take it? And the answer was **"If we take this treaty money now, you put a closed season on buffalo now and the next time you come there will be something else you will have a closed season on"**, said the Chief then.

THE COURT: All right.

## EXAMINATION BY MR. SUTTON:

A. Then the Treaty party said "No, I am paying the Treaty now and I am sure what I am telling you people here, some of it will come out all right." He said "We are here now and we did not come to an agreement yet before this Treaty is paid out." The Chief then said **"If you did not tell me yes to the questions that I put up to you, unless you say yes to me and also don't have a closed season on buffalo for us people here, we will then take Treaty,"** he said. The treaty party then said "It would be best, you are telling the truth, it would be best to take the Treaty now, you are going to say in future years, that you have already paid for that," said the Chief. The Treaty party then said "I am paying out this Treaty to the people and it has nothing to do with the land." The Chief said "If you talk about this in later years, we don't want that at all, and we might as well go without Treaty money now." The Treaty party then said "You are talking about the buffalo but I am not the boss and I cannot just tell you anything right now." The Chief said **"If you will not agree with me now this medal that you gave me,"** he took it off and said **"It is no good to me now,"** and he threw it back to the Treaty party. Then the Chief said "It is enough for me now, even at this short little talk I have had here, if you won't listen to what I am saying here, well, I am finished," said the Chief.

Q. What was the name of the Chief?

A. Louison Dosnoir. The Chief got up and the Treaty party asked Snuff the question "Well, and you, what do you think of this?" Then Chief Snuff said "I have been making a living without these buffalo this long and I live away from here. But if you do ask then I will take Treaty" Chief Snuff then again said **"If I am the Chief here now, before you pay out this Treaty, I have some questions to ask, and if the answers are all yes, then we will accept Treaty."** The Treaty party then said to Chief Snuff "You are here to say anything you want to say." The Chief Snuff said "You have already paid Treaty in Fort Smith and closed season on the buffalo. Now, if you pay Treaty here, if we accept this Treaty money, you will not have any closed seasons on any other thing on our land here, our country. **There will be no closed season on this land if I am the Chief here for this land.**" Then the Treaty party said "that if



you take Treaty now, there will be no closed season on anything at all. We will not have anything to do with anything here against your people and we will never talk about the land. The Treaty party then said "We will pay out the Treaty to you here and it has no binding on your land or country at all. It has nothing to do with this land." The Treaty party then said "What I said to you here will last for ever." The Treaty party then said: As long as the sun rises and sets in the same direction and the river flows in the same direction, what I am telling you here will be for ever." Chief Snuff then turned to his men and said "What do you think of this now?" **The answers were as long as they don't forbid us to kill game or anything, well, we think it is all right.** Then they decided to pay Treaty. The Treaty party had a little black book along side of him and opened it to a certain page and put them under oath and then told us "This is God's word, you must tell the truth after you kiss this", and Chief Snuff said, and they were told, Chief Snuff here told that all the people who are elected chiefs must kiss the bible because we are now ready to pay Treaty since you have said yes. He said "Each one of you will receive twelve dollars now but in the future when we pay out Treaty you will receive five dollars each". I think the Chief was getting more but I don't know about that part of it at all. The Treaty party said then "If everybody is satisfied, we are now ready to pay out." Then the Treaty party said, "The day is just about gone and the sun is not very high and I won't be able to pay out all the people today but I will pay out tomorrow, " said the party. That is what was said at the time. Later what was said I will also tell you that. **Five years later, the Treaty party came back** as usual, with the tents and flags up, and we all got there and sat down and this was said.

[Waiting for Witness to continue.]

A. He said that the Treaty party said "I am ready to pay out the Treaty again but I have this to tell you. That is what I am told to tell you." The Treaty party then said "**I am told to tell you people that there will be a closed season on caribou. Those with large families will kill five caribou and singles will kill only two caribou,**" we were told. He says "When the first treaty was paid out, what did you tell us? That is what we heard then. **You told us then that there will be no closed season on anything as long as one person is alive and you stuck your finger like so and told us, and now you told us we can have no caribou.**"

THE COURT: For the record, witness held up finger in the air.

A. He said, the party said, "Yes, we said this at that time. Yes, it is true, but I am told to tell you this and I am not the boss." **The Treaty party then just said there were some changes after the first treaty was paid** "But I am told to come to tell you what I am to tell you." Then the Chief said "I am not going to bother you further-more. That is enough. That five dollars you are giving us now, it is no good to us. That is enough" said the Chief.



THE COURT: What was the Chief's name.

THE INTERPRETER: Joseph Drygeese. I think he is Dogrib, he said.

A. **Then they talked about this caribou being closed and that, and everybody got up and left and went home.** The Treaty party or agent's name was Card. After they left there, the chiefs all got together and they had some sort of a meeting. What was said there, I don't know. Then he said the chiefs got together and had their meals together and they were still sitting there when they could observe someone coming down. It didn't look like a kid but it was someone coming down. Then this somebody came down here, an old man by the name of Alphonse Mandeville, and he come to the tent where the chiefs were and he opened the flap and said the Bishop would like to see you here. The Chief's answer was "I knew this was coming. We will be up to see the Bishop, tell him so." He said I was only young then that time, I didn't think I would live this long. When the chiefs went up to see the Bishop, I followed. On arriving there, they were all going in to see the Bishop, quite a crowd. I went back because I was still young then. I didn't go in that time. Then the chiefs told the Bishop "Father, you sent for us and we are here now and we would like to know why you sent for us." The Bishop's answer was "I will tell you what I sent to you for. It is this. You have already taken Treaty before and you will continue taking it," said the Bishop. Then he said "Father, what you are telling us here, you are now a Bishop, you were a Father before, but now a Bishop, and what you are telling us take the Treaty again but it has nothing to do with you." The Bishop's answer "It is true but I am told by the Treaty party to tell you people this. That is why I said that." The Chief then told the Treaty party that what we are thinking about I will tell you and this is what I am thinking about, if you have something down in writing, the truth in writing, then I will be satisfied and have all the chiefs have a copy of such. Then the Treaty party told the chief he will put something down in writing, the truth in writing then I will be satisfied and have all the chiefs have a copy of such. Then the Treaty party told the chief he will put something down in writing and **they will not forbid anyone and that will not forbid anyone. There will be no loss or game loss of any kind, forbidding them in writing, all around Great Slave Lake here.** All the chiefs will receive a copy of this agreement here, all around the Lake here. The Chief then said "All right, make out true copies and give me one before I take Treaty again." Then copies were made and we all got the people around here, like Pierre Mercredi, Trader and so on. All witnessed this thing and their names were put down. That is the end of my story.

Louison Dosnoir is reported to have said this about game laws during the first treaty:

He emphasized that he **did not want the buffalo to be closed** from the hunters as it had been done in Fort Smith. The people told him to talk for buffalo: Why the law

against killing the Buffalo? . . . He asked the Indian Agent why the closed season on buffalo, for three years now, and why they never asked the people. He said that there had to be an open season on buffalo . . . the people are not taking that many buffalo; only about 10 families really hunt them much. **Louison said that maybe we won't take treaty if we cannot hunt the buffalo. . . .**

The Whiteman said, "I'm going to give you some money." We asked him if it was because **he was putting buffalo in a park** that he was giving money. We had all we needed and the money would not replace the value of the buffalo they were locking up. **We don't want the buffalo locked up. We told him that if he put the buffalo in a park we would not take the money. He told us he had nothing to do with the park and that he was sent here only to give out the treaty money.** He also told us we did not live only on the buffalo and we could do without. **But we insisted that we would not take the treaty money if he locked up the buffalo.** So then he said they would not put the buffalo in a park and we could live on whatever we wanted to. . . . The ducks could not keep us alive for they come in the spring and leave in the fall and we would have to go hungry in the winter. We were told that we would be given enough money to live on during the winter. And he told us we had no say on our land and not to complain. He also said it is Whiteman's and now. **Before, he told us we could always live off our land and hunt and fish. Now he was telling us we could do neither . . . . Already it was bad, lots more was said, and there were arguments. . . .** The White man kept saying that he was not the boss so he could not promise much. The Chief asked why the boss would not come to Fort Resolution to speak with them. They wanted to talk to him. . . . Louison said that if we could not get a definite answer on what was talked about it was of no use. He told the Commissioner, "I know this country, and the way you are talking, you talk like you know it better than me. . . . Take your money in your suitcase and go if you are not going to listen to the people." They had put the Treaty medal on him, but they wouldn't listen to his talking for the buffalo, and he threw it down and quit. (Johnny Jean Marie Beaulieu)

Frank Norm (son of one the official interpreters) said that Louison returned to his tent and removed his uniform. After returning it to the Treaty party he said:

"That's enough. I don't want to be your Chief; that sun is just about the same place as it was when you made that promise to me, and if you are going to break it now, **it's only yesterday you made this promise to me and already you are breaking it, what about the years to come?" . . .** He never even got his treaty, he walked out of the tent and sat amongst the people . . . (in Fumoleau 1976:94)

From these statements several particulars of the treaty negotiations become clear:

1. The Indians did not ask for treaty money
2. The Indians knew about game restrictions and regulations in the N.W.T. and refused to sign the treaty if rules were imposed upon them.
3. According to the Indians, the treaty negotiators demanded and were promised that nothing would interfere with their livelihoods and their lands. The Indian version of the Treaty 8 negotiations are confirmed in the Commissioners' Report:

There was expressed at every point the fear that the making of the treaty would be followed by the **curtailment of the hunting and fishing privileges**. . . .

We pointed out that the Government could not undertake to maintain Indians in idleness; that the **same means of earning a livelihood would continue after the treaty as existed before it**, and that the Indians would be expected to make use of them.

Our chief difficulty was the apprehension that the **hunting and fishing privileges were to be curtailed**. The provision in the treaty under which ammunition and twine is to be furnished went far in the direction of quieting the fears of the Indians, for they admitted that it would be unreasonable to furnish the means of hunting and fishing if **laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood by such pursuits**. But over and above the provision, we had to solemnly assure them that **only such laws as to hunting and fishing as were in the interest of the Indians** and were found necessary in order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it.

We assured them that the treaty would **not lead to any forced interference with their mode of life**. . . .

In the main the demand will be for ammunition and twine, as the great majority of the Indians **will continue to hunt and fish for a livelihood**. It does not appear likely that the conditions of the country on either side of the Athabasca and Slave Rivers or about Athabasca Lake will be so changed as to affect hunting or trapping, and it is safe to say that so long as the fur-bearing animals remain, the great bulk of the Indians will continue to hunt and to trap.

According to the commissioners, the Indians were promised the following:

1. The same means of earning a livelihood would continue **after the treaty**.
2. A solemn assurance that only such laws as to hunting and fishing as were in the interest of the Indians **would be enacted (these were to protect the animals)**.
3. Indians would be as **free to hunt, trap, and fish after the treaty as they would be if they had never entered into it**.
4. **The treaty would not lead to any forced interference with their mode of life.**
5. They would be given ammunition and twine to support their way of life.  
(Aasen 1993:53)

Bishop Breynat, who witnessed the signing of Treaty 8, adds that Indians were also guaranteed that they would be protected from white competition. In his affidavit he wrote:

**They were promised that nothing would be done or allowed to interfere with their way of living, as they were accustomed to and as their antecedents had done. . . .**

**They were guaranteed that they would be protected, especially in their way of living as hunters and trappers, from white competition, they would not be prevented from hunting and fishing, as they had always done, so as to enable them to earn their own living and maintain their existence.**

James Cornwall, who witnessed the signing of Treaty 8 at Lesser Slave Lake, agreed with Breynat in his own affidavit:

**Nothing would be allowed to interfere with [the Indians'] way of making a living, as they were accustomed to and as their forefathers had done. . . .**

**They were guaranteed protection in their way of living as hunters and trappers, from white competition; they would not be prevented from hunting and fishing as they had always done, so as to enable them to earn their living and maintain their**



existence.

Much stress was laid on one point by the Indians, as follows: **They would not sign under any circumstances, unless their right to hunt, trap and fish was guaranteed and it must be understood that these rights they would never surrender.**

It was only after the Royal Commission had recognized that the demands of the Indians were legitimate, and **had solemnly promised that such demands would be granted by the Crown, also, after the Hudson's Bay Company Officials and Free Traders, and the Missionaries, with their Bishops, who had the full confidence of the Indians, had given their word that they could rely fully on the promises made in the name of QUEEN VICTORIA, that the Indians accepted and signed the Treaty, which was to last as long as the grass grew, the river ran, and the sun shone - to an Indian this means FOREVER.** (in Fumoleau 1976:55)

The Commissioners' report and Breynat and Cornwall's affidavits provide support for the Dene oral historical version of the portion of Treaty 8 which deals with livelihood issues. Despite these promises the actual text of the Treaty 8 reads:

And Her Majesty the Queen **HEREBY AGREES** with the said Indians that they shall have **right to pursue their usual vocation of hunting, trapping and fishing through the tract surrounded** as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.

... and for such Bands as prefer to continue hunting and fishing, **as much ammunition and twine for making nets annually as will amount in value to one dollar per head of the families** so engaged in hunting and fishing.

Rather than implementing what was negotiated, the government chose to restrict hunting, fishing, and trapping as it saw fit. Daniel (1976:1) writes of resentment caused by non-compliance with the spirit and intent of the treaty:

Among all of the issues surrounding the implementation of Treaty 8, few have involved as much bitterness and conflict as the problem of controlling the activities of white hunters, trappers and fishermen and conserving fish and wildlife for the benefit for Indian people. (Daniel 1976:1)

The testimony of Indian elders, and the Commissioners' report, acknowledge that



livelihood issues were the most important concern of the Indians at the signing of Treaty 8. Indians had already felt the economic impact of non-native trappers, miners, and prospectors living in the area. In the N.W.T., restrictions had been placed on migratory birds and on bison. The Indians wanted livelihood assurances in times of distress, especially guarantees that their economy would not be restricted in any way. Not only did the Commissioners assure them that they would be able to maintain their livelihood, but they said that the **government expected them to maintain their livelihood**. While the prairie treaties recognized that settlement would create the need for an alternative to traditional economic modes, in the N.W.T. it was recognized that there were few realistic alternatives to hunting, fishing and trapping. The Indian people were assured, and it was understood, that Treaty 8 would protect, rather than threaten, their way of life (Daniel 1976:40). Signatories to Treaty 8 in the N.W.T. understood that they would retain ownership of fish, wildlife, and fur trapping areas. They would continue to own the land. They also understood that they could proceed unimpeded in their livelihood practises as they always had - hunting and fishing for food, trapping for furs, trading or selling products of the land for goods or for cash - because the spirit of Treaty 8 guaranteed that Natives would always be "as free to hunt, fish and trap as if they had never entered the treaty."

Daniel (1976b:5) points out that while the treaty was expected to resolve conflicts between native and non-native groups, the decades after the treaty saw an increase in hostilities. Daniel (1976b:9) points out that the written text of Treaty 8 did not address the extent to which hunting, fishing, and trapping would be available to non-Indians and non-treaty Indians. While Treaty 8 gives Indians certain assurances against legal restrictions, it did not clearly protect the Indian from white competition. Another problem is that the **text of the treaty** did not stipulate or insure that wildlife would be conserved primarily for the benefit of the Indians:

It is difficult to judge the extent to which the rights and practices of non-Indian trapper might have been the subject to **verbal negotiations** at the time of the treaty. Certainly the use of poison traps and the conflicts between Indian and non-Indian were of great concern to both sides and one might have expected that the rights of non-Indians would have been the subject of some discussion.

The strongest evidence that the Indians were given **explicit promises that they would be protected against white competition in hunting and trapping** is contained in

**twenty-one affidavits obtained by Bishop Breynat in 1937 [which] . . . asserted that the treaty promised that the Indians would be protected in their way of living as hunters and trappers from White competition.**

Despite these reservations, the affidavits must be taken seriously, for even if protection from white competition was not explicitly promised in the negotiations, it could be argued that **the spirit of the treaty required government action to protect the Indians' livelihood from threats such as that posed by white competition.** At least one might assume that these witness to the treaty would not have signed the affidavits had they seen protection from competition as **being in conflict with the spirit of the treaty.** The Indians were given repeated assurances that if any new fish and wild life laws were passed they would be for the purposes of conservation and for the benefit of the Indians, and that the government was interested in seeing them continue to make their livelihood as before. (Daniel 1976b:9-12)

The text of Treaty 8, whatever its shortcomings, does recognize that the Indian interest in fish and wildlife is, and continues to be, a vocational interest because trapping is a commercial enterprise (rather than a subsistence enterprise). Treaty 8 does not distinguish between commercial and non-commercial uses of fish and wildlife (Daniel (1976:7-8).

More important than the **written terms of the treaty were the verbal negotiations that took place prior to the signing.** We have seen no record of these negotiations which would indicate that any distinction was made between commercial and non-commercial activities. On the contrary, there is every indication that commercial activities comprises such a large segment of the native economy that they would **have refused to sign the Treaty** had they been given any indication that they would be **restricted to hunting, fishing and trapping for food.** Furthermore, the Treaty Commission not only recognized this but actually warned the Indians that they would be **expected to make their living in the same manner as they had in the past and could not expect to live on government provisions.** (Daniel 1976b:8)

N.W.T. Elders have stated that at the negotiation of the Treaty they would not have taken treaty money unless they had guarantees that nothing would change regarding their way of life -- that there would be no regulations against wildlife, no closed season on buffalo, no "game loss of any kind." Fumoleau (1976:65) summarizes the provisions of the Treaty 8 according to its spirit and intent:

Their [the Dene's] main concern was for the protection of their freedom to hunt, trap, and fish. Only when the Commissioners promised them that they would be free to hunt and trap and fish for a living, and that all their rights would be protected against the abuses of white hunters and trappers, did the Indians at each trading post of the

Treaty 8 area consent to signing the Treaty.

Fumoleau (1976:20) writes of game laws and the territorial administration for the period 1922 to 1939:

. . . a period replete with discontent, broken promises, evasions, and deceptions. Prime Minister St. Laurent passed this judgement on Government performance during that time: 'Apparently we have administered the vast Territories of the North in a continual state absence of mind.' The Federal Government transferred administration of the Mackenzie District to a territorial government, known as the Northwest Territories and Yukon Branch, established in 1921. Its policies were often contrary to the best interests of the Indian people. **Treaty promises made by government were ignored by both the territorial government and by the provincial governments of Saskatchewan and Alberta. Especially serious was the breach of promises to guarantee the Indian his freedom to trap and hunt, and to provide protection from the encroachment of white trappers. These promises were broken, forgotten, and finally disavowed.** The game laws were often in direct violation of Indian rights, and caused hardships unequalled in Indian history. The Indians depended on trapping for 95 per cent of their income and on hunting and fishing for their food. When these activities were threatened and restricted, it meant economic disaster for the native people.

Fumoleau (1976:54) writes of the protection of game rather than of people:

In the face of the frequent misery and starvation of the Indian people, the government's concern for preserving game seemed misplaced.

While there were avenues for Native people to receive permission to hunt in game preserves, these involved fighting through the government's bureaucratic channels and requests were not always successful. The response to a telegram to the Superintendent of Indian Affairs, Ottawa, November 2, 1933, from a man at Fort Smith, shows the territorial and federal government's lack of sensitivity, regarding Treaty livelihood rights. The telegram reads as follows:

Trapping season opened today I wish permission to hunt and trap in Wood Buffalo Park have trapped there years ago stop I was elected chief of Chipewyan band here and am Treaty stop can obtain no permit here please act for me and wire reply as soon as possible.

The response from A. F. Mackenzie, Secretary of D.I.A. showed the consequences of asking for permission:

In reply to your telegram of today's date, re trapping in Wood Buffalo Park. I wish to inform you that you are not an Indian having been discharged for Treaty on the 10th March, 1921. I might further inform you that you and your family should not have been paid annuity at the recent distribution and the \$60.00 paid you will have to be refunded. You also are not eligible to hold the position of chief of the Fort Smith Band as you are not, as above stated, an Indian. (RG 10, Volume 4049, file 361.714).

Francois Paulette (Fort Smith) spoke at the Mackenzie Valley Pipeline Inquiry about the formation of game preserves, game laws, and Indian rights in 1976:

One of the people killed a buffalo out of the Wood Buffalo Park, just on this side. They confiscated it, they took the buffalo away from him. They said, "You illegally shot that buffalo." Just 20 miles, 15 miles north of here or west of here, they call it Mission Farm.

Ten Years ago buffalo used to graze in there and used to -- Indian people used to go over there close and go and hunt. Today farmers, so-called farmers, were given leases to this ground. Today they have nothing to show there. They have one gas pump, I think. That land is our land, it's leased land now, they fenced it. The little cattle or sheep or pigs they had in their venture died off or weren't properly taken care of. It wasn't economically feasible to -- and they're still there and today no longer the buffalo go there and -- so that the Indian people [can't] go for their meat. (Proceedings at Community Hearings, Vol. 48, April 1976, 4747-4749)

A quote from an article written by Breynat in 1938 will serve to summarize livelihood promises under Treaty 8:

They made special demands, which although not included in the treaty, the commissioners promised would be granted. These demands the commissioners mentioned in their reports, but they failed to state that the demands had actually been granted. Promises in the name of the Crown were the following: 1. That nothing would be allowed that would interfere with the Indians' way of living. 2. That old and destitute Indians would always be taken care of, their future existence would be carefully studied, every effort would be made to improve their living conditions. 3. That they would be protected, especially in their way of living as hunters and trappers, from white competition.

In order to prove that these promises had been made, and to give the government



ground for action, in the summer of 1937 I visited more than 50 old time residents of the northwest and received sworn statements from them. They were all men who had been present when the treaties were signed and the promises made. These affidavits to the number of 46 have been handed to the federal authorities that they may know the promises were authentic and to give the government grounds for action. (in Fumoleau 1976:381)

It is now 1994 and neither the territorial nor the federal government have acted to comply with the promises made regarding the rights of the Dene to pursue hunting, fishing and trapping unimpeded.

### **3.4 The Dene Understanding of Farming and Economic Development**

As well as livelihood promises regarding hunting, fishing and trapping, Treaty 8 was written to provide other economic benefits. This section will look at farming provisions of Treaty 8 and the spirit and intent of farming provisions.

Zlotkin (1989:312) writes of farming:

The impracticability of expecting the indigenous peoples with whom the treaties were concerned here to be able to sustain themselves on the area of land each was to receive when reserves came to be allocated and set aside offers one more reason to suspect the bona fides of the negotiations. Perhaps the extreme southwestern area might permit a bare subsistence living to be grubbed out from the soil, but most of the area embraced by the treaties is as already described - rock, lake and tundra - with hunting, trapping and fishing offering the only viable method of maintaining life. (in Morse 1989:312).

Breynat wrote of the conditions of the Treaty 8 area:

First it must be emphasized that the Northern country is not and never will be, with the exception of some small areas, an agricultural country. As it has been mentioned, for the Indians, the only means of making a living is fishing, hunting and trapping. (in Fumoleau 1976:372)

Despite these conditions, the Commissioners made provisions for farming and economic continuation:

The treaty was therefore so drawn as to provide three ways in which assistance is to



be given to the Indians, in order to accord with the conditions of the country and to meet the requirements of the Indians in the different parts of the territory.

In addition to the annuity, . . . the treaty stipulates that **assistance in the form of seed and implements and cattle will be given to those of the Indians who may take to farming, in the way of cattle and mowers to those who may devote themselves to cattle-raising**, and that ammunition and twine will be given to those who continue to fish and hunt. The assistance in farming and ranching is only to be given when the Indians actually take to these pursuits, and it is not likely that **for many years** there will be a call for any considerable expenditure under these heads. The only Indians of the territory ceded who are likely to take to cattle-raising are those about Lesser Slave Lake and along the Peace River, where there is quite an extent of ranching country; and although there are stretches of cultivable land in those parts of the country, **it is not probable that the Indians will, while present conditions obtain, engage in farming** further than the raising of roots in a small way, as is now done to some extent. **In the main the demand will be for ammunition and twine**, as the great majority of the Indians will continue to hunt and fish for a livelihood. It does not appear likely that the conditions of the country on either side of the Athabasca and Slave Rivers or about Athabasca Lake will be so changed as to affect hunting or trapping, and it is safe to say that so long as the fur-bearing animals remain, the great bulk of the Indians will continue to hunt and to trap.

The Text of Treaty 8 included these promises:

FURTHER, Her Majesty agrees to supply each Chief of a Band that selects a reserve, for the use of that Band, ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones.

FURTHER, Her Majesty agrees that each Band that elects to take a reserve and cultivate the soil, shall, **as soon as convenient** after such reserve is set aside and settled upon, and the Band has signified its choice and is prepared to break up the soil, receive two hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families one plough and one harrow, and to the Chief for the use of his Band, two horse or a yoke of oxen, and for each Band potatoes, barley, oats and wheat (if such seed be suited to the locality of the reserve), to plant the land actually broken up, and provisions for one month in the spring for several years while planting such seeds; and to every family, one cow, and every Chief one bull, and one mowing-machine and one reaper for the use of his Band when it is ready for them; for such families as prefer to raise stock instead of cultivating the soil, every family of five person, two cows, and every Chief two bulls and two mowing-machines when ready for their use, and a like proportion for smaller or larger families. The aforesaid articles, machines and cattle to be given one for all for the encouragement of agriculture and stock raising. . .

McCardle and Daniel (1976:1) write about Treaty 8 and how the treaty was designed for the Lesser Slave Lake and Peace River districts of Alberta. While most of the Indians living there were nomadic hunters and trappers, they lived in an area conducive to agriculture. The Commissioners did not believe that the Indians would want farm assistance or reserves in the near future. They envisioned that settlement would encroach gradually on Indian territories and then "by natural transition the Indians would turn to agriculture and wage labour." The government would then step in and provide reserve lands, as well as provide aid during the crucial transition, but not before it was necessary (McCardle and Daniel 1976:2).

Kinoosayo, a spokesman at Lesser Slave Lake during the Treaty 8 negotiations discussed agricultural aid and independence:

Up to the present I have earned my own living and worked in my own way for the Queen. It is good. The Indians loves his way of living and his free life . . . Up to the present I have never seen the time when I could not work for the Queen, and also make my own living.

The Treaty Commissioners assured Kinoosayo that with the government's assistance the Indian people would be even better able to provide for themselves after the treaty than they were before.

These same issues were raised by the Drygeese at the N.W.T. negotiations (as recorded in June Helm's interview with Susie Abel):

Drygeese said, **"This money never happened before, so we want to know if something will be changed later. If it is going to change, if you want to change our lives, then it is no use taking treaty because without treaty we are making a living for ourselves and our families."** (in Fumoleau 1976:89-92)

Like the Lesser Slave Lake negotiations, the Commissioners assured the Indians in the N.W.T. that the annuities and other provisions of the treaty were to help the Indians out. Discussions about farming aid were not recorded in testimonies given by Dene elders to courts and interviewers. We do know, however, that farming experiments were carried out in the Northwest Territories. Fumoleau writes that "Indian agencies were opened at Fort Smith and at Fort Simpson in 1911, 'to distribute relief and carry out experiments in farming.' . . ." (Fumoleau 1976:139). Often, it was priests and residential schools that carried out agricultural experiments.

Breynat wrote to the Government in 1936 about economic development and yet did not mention farming as an option

There might be some possibility of grouping a certain number of Indians, at least among the poor and the derelicted, in one or two villages somewhere, in or near the Buffalo Park, where they could be **trained to support themselves with Buffalo meaty and fish**. Gradually might be developed some kind of industry to prepare dry meat for the Police of the North, the schools and the destitutes all over the North. There may be found some way to **tan the Buffalo hides** improved for the old ways of tanning, as it has been in practise among the Indians for many generations.

It would be one of the duties, and an important one, of the Superintendent residing at Fort Smith, to make a full investigation to start some experiment with one or two families, good willing families may be found for the experiment, and to report to the Government for further improvement.

Something should be done to encourage **fur farming** among the Indians. It will be slow work because they will have to be induced to settle down a little more, but the very moment one or two have been induced to try, they will soon have followers when success crowns their efforts.

But there again, there must be somebody, with experience and patience to show them how to do it. . . .

However, some efforts have to be made, before it is too late, to **organize some kind of trade** which would fit in with the way of living of our Indians and would help them to support themselves whatever may happen in the future. . . .

Whatever is undertaken to help correct the present conditions of the Indians must be adapted to their actual moral and mental state, as well as to their physical and economic welfare. There is nothing theoretical about the problem. . . . It is a case of correcting and trying to eliminate the known causes of their present conditions and leading them into channels where their ability can be used to help themselves - they have a natural ability of a high order. They can sustain and develop themselves by following their vocation as bush men, trappers and hunters. All they need is protection, advice and reasonable help; it is not necessary to go to great expense to get a start. First, a general and **well defined policy must be adopted, without ever losing sight of the Northern conditions nor of the privileges and rights of the Indian, under Treaty**. Then the work should be started on at once on a small scale and gradually carried out by men of a thorough experience, with firmness, human understanding, and common sense. (Breynat in Fumoleau 1976:378)

When referring to northern conditions, we can assume that Breynat did not see

farming as an option for developing economies. We can also assume (from the above quotation) that Breynat saw economic development as a treaty right. Today, there is the belief by all Treaty 8 groups that the treaty committed the government to economic development. The Oberle Task Force explains how Treaty 8 and farming relates to this commitment:

The issue of Federal support for economic development as a Treaty right arises in connection with the negotiations that took place around alternative livelihoods to hunting, fishing and trapping. In the course of treaty-making, the Commissioners anticipated that some areas of the region could be suitable for future agriculture and stock-raising and incorporated such a possibility into the Treaty. Accordingly, the Treaty specifies provisions for tools, implements seed, cattle and supplies for one month each year over a period of several years while crops are being planted. Cattle and implements were designated in the written version of the Treaty as a "once-for-all" allotment. Oral history suggests that the Indians did not know about the "once-for-all" qualification. **Their understanding** today is that what was actually negotiated during the Treaty making **was an economy based on an exchange of ceded lands for a sacred federal trust that guaranteed to Indians access to alternative economic opportunities.** (Task Force 1986:33-34)

Contrary to the Oberle Task Force, the Indians did not agree to cede their land in the N.W.T.. Treaty rights come from sharing the land with non-natives.

A TARR-IAA Research Report confirms economic development rights for all treaties in Alberta (including Treaty 8):

In assenting to these three treaties the Indian people realized that although the government was committed to helping them adopt new ways of making a living, real economic development would require a great effort on their part. Archival evidence from the period immediately following each of the three treaties indicates that many bands [were willing to try agriculture and other occupations]. . . the bands were aware that they could not succeed at **completely changing their economic base** without the type of assistance in the forms of equipment, stock and instruction that was promised in the treaties. (TARR-IAA Research Report n.d. 5-6)

The fact that economic development assistance was promised in the treaties is often regarded as little significance to the government because the government has given assistance to Indian whether they are treaty or not. Yet to the Indian people, the fact that these promises were made in the treaties gives them special significance. (TARR-IAA Research Report n.d. 8)

The TARR-IAA Research Report claims that the government has interpreted treaty farming provisions narrowly, based on the formula in the Treaty, rather than based on its



spirit and intent. The government rarely referred to the treaties nor did they consult with Indian people when developing farming and economic development policies and programs.

Although in the decades following the treaties the Indian people insisted that economic development should be based on the treaties, they seldom referred to the exact written terms of the treaties but rather to the general spirit of treaty promises that **the government would provide a level of assistance which would allow them to progress.** . . . they placed their confidence in these more general assurances of the commissioners. The treaty commissioners promised that the level of assistance would indeed be sufficient to provide an alternative way of making a living for those bands who by choice or by necessity sought alternatives to hunting, fishing and trapping. (TARR-IAA Research Report n.d. 9-10)

TARR-IAA suggests that the provisions in the text of the treaties are **inadequate** to develop economies as indicated in the treaty even if they had been implemented narrowly. The government could not through these means enable the Indian people to adapt to new economic circumstances. The spirit and intent of the treaties was one of ongoing commitment to economic development. Economic development is a treaty right granted "in **partial compensation for the Indian agreement to open their territory to settlement.**" (TARR-IAA Research Report 13)

Historically, Indian people have not been given resources to develop their economies and have not been incorporated into economic activities in the Territories. Fumoleau describes economic development in the N.W.T. and the Indians role in it to 1939:

The growth and expansion of prospecting and mining was largely due to improved transportation and communications services. Airplanes took prospectors to areas hitherto inaccessible by foot or by boat. A total of 640 mineral claims were staked at Pine Point on the south shore of Great Slave Lake in 1929-1930. In the fall of 1930 Punch Dickens piloted Gilbert Labine to the eastern shore of Great Bear Lake, Hunter Bay, Cameron Bay, and Labine Point, where pitch-blende was discovered in 1931. On this site, now known as Point Radium, the richest Uranium Mine in the world began operation in 1932. The prediction of a 100,000 people for Bear Lake did not materialize however, when the mine faltered. Gold was discovered at Yellowknife in 1933. Prospectors and miners for Port Radium rushed to the Yellowknife district. Oil from Norman Wells found a market with the opening of these mines. The refinery produced 4,605 barrels of fuel oil in 1933, and by 1938 was producing 22,855 barrels. In 1935, the Department of Mines carried out a geological survey of an area of 10,000 square miles, north of Great Slave Lake. There followed an increase in mining and prospecting activity, with 400 prospectors searching for mineral in the Mackenzie



District in 1937. One company, Consolidated Mining and Smelting, used eleven planes in its prospecting program. For the first time, the mineral production of the Northwest Territories surpass the fur production in value. **Yet by 1939, not one native person was employed in mining or prospecting.**

The census of 1931 showed a total population of 9,723 Northerners. Of these 4,670 were Eskimos, 4,046 Indians, and 1,007 whites and Metis. There was little interchange between the whites and the natives. For the most part, Indians were not welcome in the mining camps. (Fumoleau 1976:263)

While agreeing to open the lands for settlement, Indians did not consent to the large scale mining, oil extraction, and other economic development activities on their lands. They have not received compensation for this development, nor have they even historically been welcomed into the larger economy as wage labourers. The Dene have not received the tax revenues generated from resource extraction on their lands.

N.W.T. Treaty 8 bands were guaranteed farming equipment and assistance in developing their economies when they were ready to do so. These rights are not viewed by Treaty 8 groups as "frozen in time" at 1899 standards. While the government committed itself to hoes, ploughs and harrows, modern counterparts like tractors, are believed to follow the spirit and intent of the Treaty. More research is needed into the farming issue in the N.W.T. to determine whether, because of northern conditions, even farming implements as laid out in Treaty 8, were granted. While the government has supported economic development in the North generally, it has implemented DIA policy for Indians, rather than granting them rights under treaty.

Economic Development Assistance is a Treaty right, not merely a matter of government policy . . . This form of assistance was insisted upon by the Indians during treaty negotiations. (TARR-IAA Research Report n.d. Appendix 1:1).

### 3.5 The Dene Understanding of Reserves and Lands in Severalty Treaty 8

The Commissioners' wrote this of the negotiating sessions:

The Indians are given the **option of taking reserves or land in severalty**. As the extent of the country treated for made it impossible to define reserves or holdings, and as the **Indians were not prepared to make selections**, we confined ourselves to an

undertaking to have reserves and holdings set apart in the future, and the Indians were satisfied with the promise that **this would be done when required**. There is no immediate necessity for the general laying out of reserves or the allotting of land. It **will be quite time enough** to do this as advancing settlement makes necessary the surveying of the land. Indeed, the **Indians were generally averse to being placed on reserves**. It would have been impossible to have made a treaty if we had not **assured them that there was no intention of confining them to reserves**. We had to very clearly explain to them that the provision for reserves and allotments of land were **made for their protection**, and to secure to them in perpetuity a **fair portion of the land ceded**, in the event of settlement advancing.

According to the commissioner's report the Commissioners promised:

1. The option of taking reserves or land in severalty if so desired.
2. That there was no intention of placing the people on reserves.
3. If, or when, there were reserves they would be established with Indians consent.
4. The objective of establishing reserves would be to protect the Indians.
5. If there were reserves the Indians would get a fair portion of the land.

The Commissioners' admit that it would have been impossible to make the treaty if Indians were to be placed on reserves. Evidently the Indian negotiators distrusted the government's intentions. While the Commissioners' assured the Indians that nothing would be done to interfere with the Indian's mode of life, it is clear that the Commissioners' knew that "advancing settlement" would cause change to the point when land surveys would be necessary. The Commissioners' promises were echoed in the text of Treaty 8:

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands **as desire reserves**, the same **not to exceed in all one square mile for each family of five** for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families; **and for such families or individual Indians as may prefer to live apart from band reserves**, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each Indian, the land to be conveyed with a proviso as to non-alienation without the consent of the Governor

General in Council of Canada, the selection of such reserves, and lands in severalty, to be made in the manner following, namely, the Superintendent General of Indian Affairs shall depute and send a suitable person to determine and set apart such reserves and lands, **after consulting with the Indians concerned as to the locality which may be found suitable and open for selection.**

Provided, however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any band as She may see fit; and also that the aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of Her Majesty's Government for the use and benefit of the said Indians entitled thereto, **with their consent** first had and obtained.

It is further agreed between Her Majesty and Her said Indian subjects that such portions of the reserves and lands above indicated as may at any time be required for public works, buildings, railways, or roads of whatsoever nature may be **appropriated** for that purpose by Her Majesty's Government of the Dominion of Canada, due compensation being made to the Indians for the value of any improvements thereon, and an equivalent in land, money or other consideration for the area of the reserve so appropriated.

The text of the treaty promises:

1. Reserves would be established for those that desired them by a formula set out in the treaty.
2. For those Indians who wanted to live apart 160 acres to each Indian.
3. Reserves or land holdings in the future if so desired.
4. That they would not be placed on reserves against their wishes.
5. Consultation on the choice of suitable locations for reserves and land holdings.
6. Compensation for lands appropriated by government.
7. Any interest in reserves may be sold by the Queen after obtaining the consent of the Indians.

The Task Force Report provides a summary of the government's perspective on the reserve-land in severalty issue:

Many of the Indians during Treaty negotiations resisted being confined to reserves, since it was necessary to range throughout the region in pursuit of their livelihood.

The Commissioners acknowledges that the treaty provisions, which had been applied to Indians in more southerly climes, . . . had little relevance in the Treaty 8 region. (Task Force 1986:31)

Fumoleau writes how Treaty 8 land entitlement differed from earlier treaties:

In previous treaties, lands had been set aside in reserves. But Treaty 8 area differed from the fertile belts and prairies. For Treaty 8 the Government felt that a reserve system would not work in the north so, they proposed that land be allocated to each family. As Treaty 8 points out groups signatory to the Treaty had the option of taking reserves for bands or land in severalty for individual families. (Fumoleau 1976:61-62)

McCardle (1977:19-20) discusses the land in severalty issue for Alberta Indian groups and relates the types of areas covered by severalty to preserving land improved by farming, buildings (stables, cabins and fishing stations), and other subsistence related activities (McCardle 1977 46-47). McCardle describes the difference between Native and non-native interpretations of the Treaty in Alberta. She says that the Indian interpretation of the Treaty was based on the use of the land and the need to maintain separate holdings while the administration's interpretations were based on calculated acreage and documentary conveyance. She also points to methods of interpretation by government personnel who "devised expedient solutions based on literal interpretations of the Treaty and Indian Act" (McCardle 1977:47-48).

Treaty 8 simply copies the system of setting aside land for reserves that was developed for the prairies. It has been argued this was a system highly inappropriate for northern conditions because the land was intended for farming as a new economic base to supplement hunting, fishing and trapping throughout the outlying region. While the prairies had lost their economic base (bison) and had arable land, the soil in the north was not conducive to many kinds of farming, and the Indians continued to pursue hunting, fishing and trapping livelihoods. Fumoleau believes that land issues were discussed at treaty time but livelihood issues overshadowed land issues in the Natives mind:

There is evidence that land was discussed, but the Indians had witnessed closed seasons on game and were concerned therefore with the protection of their hunting, trapping and fishing rights. (Fumoleau 1976:96)

The Dene participants in the Northwest Territories had an entirely different

understanding of the land reserve and severalty provisions than did the government and Alberta Indians. Frank Norn (son of one of the interpreters) said that:

Reserves were not mentioned . . . No land transaction was made . . . They did a lot of talking about buffalo but nothing much about land. (in Fumoleau 1976:96)

As discussed earlier, this evidence was presented by Peter Friezie:

THE COURT: At the time, at either the first time they took the Treaty or the time three years later, **was there any talk about reserves?**

THE WITNESS: No. All they told them, they never said anything was going to happen later on. All they said was to promise them they were going to love them. (Peter Friezie 1973:5:302-312)

Antoine Beaulieu (1973:5:312-318) recalled this:

Q. Do you remember of anything was said concerning the land at that time?

A. No, I didn't hear of anything.

Q. Was anything mentioned about reserves?

A. No, I didn't hear nothing about that.

While livelihood issues were important, reserves and land in severalty may not have been considered as issues, because the Indians had already refused to negotiate land issues.

Then Chief Drygeese said, "There will be no closed season on our land. There will be nothing said about the land. I may be the Chief, but I would like to hear what my people have to say." All the people agreed.

The Agent said, "OK." So he signed the paper. So they gave us the money now. (Susie Abel in Fumoleau 1976:89-92)

Despite the fact that the reserve land issue was not negotiated with the Dene of the N.W.T., the government made unilateral decisions regarding Dene land.

### **Chronology of Reserves and Land in Severalty**



- 1910 Minister of the Interior and Breynat begin a journey down the Mackenzie river to survey lands in small villages into lots.
- 1913 Land survey of Mackenzie. Breynat writes to Ottawa asking that Indian land holdings be respected (erected houses). He mentions that there are no reserves and will not be for a long time. Could the land on which they have "squatted" be set aside? (Breynat in Fumoleau 1976:115)

In answer, Deputy Superintendent of Indian Affairs (Pedley) replies that Breynat should inform him of where these properties are and how many Indians are using them. He also said that it may be some time before a surveyor is sent (Pedley in Fumoleau 1976:115).

Pedley plans land surveys and instructs the surveyors to reserve as much land (camps and permanent residences) as is needed. Pedley writes "all lands near the settlements to which the Indians are entitled or are necessary for their reasonable wants, should be secured to them by having them regularly surveyed in the same manner as the remainder of the settlements. . . . I shall be much obliged if Mr. Fawcett, is instructed . . . to lay out lands which he finds used or occupied by Indians in the same manner as he does for White men. . . . The Surveyor-General suggests that each individual Indian should not be provided with a separate lot; it is suggested that the surveyor should use judgement in this matter to the extent of laying out a block of land for a number of Indians who are settled together; but should an individual Indian or others be at some other points, that these should have their separate lots surveyed as occupied and not be expected to remove in order to be all together at one point in a settlement unless they are quite willing to be all together." (Pedley in Fumoleau 1976:115)

- 1913 The government does not distinguish between treaty and non-Treaty Indians when surveying lands. Lands were allocated with, or without, regard to treaty.
- 1914 Correspondence indicates that places like Snowdrift do not need to be surveyed because the land is rocky, and not fit for farming.

Surveyor Fawcett examined whether Indian rights had been respected when reserving land. He reported that these lands were small, and not sufficient for the Indians. Rationalizations were made for small allotments: "I think for the present the lands laid out by Mr. Fawcett are sufficient. The Indians will be secured in the little plots in which they have erected houses, besides the additional lands which have been laid out for them for gardening purposes. The surveys of any additional land may be put off for an indefinite period or until we have obtained a report from one of our own officers on the necessity of making such surveys." (in Fumoleau 1976:117)

- 1914 Fumoleau (1976:117) writes, "For the Indians who had signed Treaty 8, the survey seemed to be a threat to their right to move freely through their ancestral land. John Piche, a northern prospector, advised the Department of Indians Affairs on March 28, 1914:

... the Indians around Fort Smith, Smith's Landing, Fort Fitzgerald, Fort Chipewyan and Fond du Lac are being told that the Government is about to put them onto reserves and deprive them absolutely of their right to hunt . . . ."

- 1915 Pedley writes to Conroy on February 4, 1915 that he thought the plots were too small. He requested that Conroy look at other areas in use that were near settlements.
- 1915 Bury inspected surveyed land. He reported that Fawcett's survey had not taken into account **the formula for reserves** and that reserves varied according to population size and land issued:

In every instance where Mr. Fawcett had laid a reserve for the Indians the area thus set aside was not **calculated on the number of families or members of the band, and consequently the size of each reserve varies** to a considerable degree. For instance, at Fort Resolution a rocky promontory of Great Slave Lake had been set aside as a reserve and the area was only 63 acres . . .

When I was at Resolution the Chiefs of the Chipewyan, Yellowknife, and Dogrib tribes were very emphatic in their refusal to accept the reserve as laid down by Mr. Fawcett. I myself am of the opinion, after cruising this location, that it is quite unsuitable for the needs of the Indians. Besides being

rocky and exposed, there is also no timber growth, agricultural land or good fishing in the vicinity, so that I beg leave to suggest that this reserve be cancelled.

The Chief of the Chipewyan tribe had already expressed a wish that his band be located in the neighbourhood of Little Buffalo River, where I am credibly informed that there is a large areas of good agricultural land together with some merchantable stands of timber.

At Hay River a similar state of affairs was in evidence. **Chief Sunrise, of the Slave Band, expressed his disapproval in no uncertain manner.**

After cruising this particular plot, I am inclined to agree with him that it is entirely unsuitable for the needs of his band looking to future requirements. The land itself is for the most part rocky and towards the Hay River is inclined to be of a low and marshy character. . . . (in Fumoleau 1976:118).

1916 Treaty Days of 1916 saw dissatisfaction, some of which resulted from the land survey. Fumoleau (1976:118-119) writes:

It was the first year that Indian Agent Card come to pay annuities and the third year after Susie Drygeese had succeeded Old Drygeese as chief of the Dogribs. Pierre Smallnose Drygeese was there and recalls what happened:

Susie, they put him into chief and they had Treaty twice with him and then Agent - his name Gus. . . this Gas [Card] started to talk about the land but didn't mention this at first when they start (to take Treaty). So Chief Susie Drygeese and Gas talk about land. Susie says, "not mentioned when we start, not worth talking about now. We have to have the land to live off the wild life."

They started to talk back and forth with Gas but Gas won't listen to what Susie tell him and Susie says, "If you don't want to listen to what I said, no use arguing around like this, might as well go home," and then the old man rushed out.

He (Susie) says to the [Indian] people, "No use talking; everyone go home." Gas got so excited, scared, don't know what they will do to him. **Indians mad and left before Treaty.** And Gas there alone with interpreter, scared. He told his interpreter the Indians are mad; told the interpreter to be a guard all night while he sleeps. Afraid Indians will kill him. Interpreter refused to guard him so he says, "I'll give you \$5 if you will watch me all night." Next morning interpreter tells the Indians,

"Good thing you left, he was scared and gave me \$5 to watch over him."

Bury had advised earlier that **the land reserved for the Indians at Fort Resolution was not suitable**, and the Indians, for their part, **would continue to resist any proposal to limit their freedom**.

1913-1915 Land allocations are not considered reserves under Indian Act (held by Her Majesty for the use and benefit of Indian bands). Land allocations are "land where Indians can build houses.

Fumoleau (1976:119) writes of this period:

The legal status of this land is not clear, since the Government did at times transfer the right to this land **without band consent**. Evidently, **this is not the kind of land settlement called for by Treaty 8**. Yet allocations of land to Northern Indians proceeded on a piecemeal basis, compounding the confusion caused by Fawcett's survey.

1915 Ottawa asks the Indian Agent at Fort Smith to forward information about reserve land (near the post, and extensive tracts as required under Treaty 8) for the Chipewyans. This was as a result of proposed plans for **Wood Buffalo Preserve**. (Fumoleau 1976:119)

1916 Treaty annuity officer Bury was to sell the idea of reserves to the Chipewyan:

At first the Chief and principle men of the band showed great hostility to the proposal, claiming that from time immemorial they had been accustomed to hunt and trap over the area which was created as a sanctuary and that they had hunting lodges and shacks on this land which they would have to relinquish. The Chief pointed out to me, that the mere fact of the Indians having to look around for new trapping grounds meant that it would take them a long time to become conversant with the haunts and habits of game, and that it would be a matter of many years before they could expect to achieve the degree of success they had hitherto enjoyed when they trapped over lands of which they had an intimate knowledge . . . .

After considerable discussion they decided to acquiesce in the proposal but intimated that they should receive some compensation for being deprived of

their hunting and trapping privileges.

I was not then authorized to state whether or not the Government as represented by the Animal Parks Branch of the Department of the Interior **would consent to the payment of compensation** and managed after much discussion to persuade the Indians that their interests would be well looked after in the matter by our Department and assured them that when they were ready to take up Reserves, such lands would be set aside for them provided, of course, that they were not within the Buffalo Sanctuary.

- 1916 Locations for three reserves are reported to have been agreed on. Salt River was selected because of salt deposits and grazing land, Pine Lake because it was a good fishing location, and both sides of the Slave River, which was good agricultural land.
- 1918 White people are hunting buffalo. Indian Agent Card proposes that the whole country north of the 60th parallel be made a national game preserve for Indians.
- 1920 Card recommends to the Dominion Park Branch that Salt River be made a main reserve. They oppose because they do not want the Indians to have a strategic point for buffalo hunting.

Bury writes:

Recently they [the Dene] have intimated they desire to secure as a reserve **some 11,000 acres near Salt river**, but outside of the Buffalo park, and I believe that we should not be carrying our promise to the Indians unless we used every effort to have such a reserve set aside . . .

**If it is the intention of the Animal Parks Branch to take measures to commandeer large areas of the country and thereby prevent or hinder the Indians from earning their usual livelihood, then I think the responsibility of assisting the Indians to earn their living should devolve on them.** I am confident that such action will result in our department being called upon to materially increase relief to these Indians unless, of course, they are able to settle down on some good hay lands. . . .

In the large project of the preservation of game, I am certain that if we antagonize the Indians it will cause endless trouble in the future, whereas if we approach this question in a proper manner and seek the Indians' co-



**operation** and not their hostility, much useful work can be done.

The most effective way of winning their co-operation is to accord them their reasonable requests with respect to reserves. (in Fumoleau 1976:121)

- 1920 DIA is instructed to select an Indian reserve away from Salt Springs and the buffalo. Bury replied:

**The rights of the Indians under their Treaty should receive some consideration, especially when it is remembered that these Indians were practicably debarred from occupation of a large area of land which from time immemorial had been the scene of their hunting and trapping. . . . I feel that they should in return be given sympathetic consideration in the matter of selecting their reserve. (Bury in Fumoleau 1976:121)**

- 1920 Dominion Land Surveyor Kitto spoke for the creation of reserves:

The Treaty Indians are very anxious that their reserves should be selected and surveyed without further delay. As yet no Indian reserves have been surveyed in the Mackenzie District. With the influx of prospectors it is urgent that the Indians should be located on reserves with as little delay as possible. It is also necessary to have such reserves determined before proceeding with the creation of buffalo game reserves. (in Fumoleau 1976:121)

- 1920 The Advisory Board of Wildlife proposed that Indians not be given hay land so that they would be away from the buffalo.

Could we establish a reserve at the mouth of the river, where the Indians could live, and then allow the plains to be used for hay purposes **without actually giving them the area where the hay is, without giving the hay land the same standing as an ordinary Indian Reserve? . . . .** (Hoyes in Fumoleau 1976:121)

- 1921 **Indians are told the proposed reserves were only part of their land entitlement under Treaty 8. The remaining areas owed to them would be allocated later.** Fumoleau (1976:122) writes:

The prospect of being confined to the proposed reserve alarmed the band at Fort Smith. **Chief Squirrel and headman Michel Mandeville informed the**

Indian Agent on July 4, 1922 that the Indians "had no wish nor intention of living on a reserve." They were assured that this was not the Government's intention. Whatever that intention was, the Indians' rights to the land was still at issue in 1930.

1930 Parker, Inspector for Indian Affairs writes:

There appears to be **some doubt as to the standing** of certain lands at Salt River, about twenty miles below Fort Smith. I understand that these lands were surveyed some years ago for Indian occupation. The Fort Smith Indians are inclined to live there more than at Fort Smith. At Salt River they are able to get fish and their residence there should be encouraged. Already, however, some undesirable whites are building there and this should be stopped by declaring the land an Indian reserve.

1941 Indian Reserve No. 195 is established by an Order in Council. It contains 110.4 acres and is for the use of the Fort Smith Indians. Fumoleau (1976:122) writes, "**The remaining land to which they would be entitled under Treaty 8 were never allocated.**"

1959 Nelson Commission established to investigate "the unfulfilled provisions of Treaties 8 and 11 as they apply to the Indians of the Mackenzie District" (Parc 1/1 11-5 1933-36).

"Although small areas of land have been made available for the exclusive use of the Indians from time to time, reserves, **in the proportions provided for in the treaties have not been set aside** for the fifteen Indian bands residing in the District." That there is doubt whether it is in the interests of the Indians to have reserves set aside for them in the Northwest Territories in the proportions provided for them by the treaties and **informal discussions with the Indians have indicated that they have no firm opinion on the matter and might be prepared to consider renegotiating the treaties on a different basis . . .** (Parc 1/1 11-5 1933-36:1).

From a study of the two Treaties involved, they provided among other matters, for the setting aside of Reserves for each Band of Indians to the extent of one square mile for each family of five or in that proportion for larger or smaller families. It is to be **noted that, although the Treaties were entered into many years ago, no Reserves have, in fact, been set aside** for the approximately 4500 Indians now residing in the Mackenzie District. In

consequence the Indians have had **neither the use of the land promised to them nor have they derived any income therefrom.**

- 1959 Nelson Commission reports this of the meeting of all the Chiefs that was convened at the Fort Smith Hearing:

A meeting of all the Chiefs had been convened at Fort Smith in 1957 for the purpose of acquainting them with the problem and the possible solutions to it, and they had been advised to discuss the possible solutions to it, and they had been advised to discuss the matter with their fellow Band members . . . . On at least two occasions subsequently all bands were reminded of the necessity of reaching some opinion and on the last occasion were informed that the Commission would be visiting them and would expect some definite answers. However, as mentioned above, the Commissioner's meetings with the bands **disclosed a lack of understanding of the problem, a lack of preparedness, and few definite opinions.**

In the Commissioner's view there are several explanations for the situation. In the first place, it seems likely that many of the Chiefs did not return from the Fort Smith meeting with any clear understanding of the problems and thus were not in a position to adequately discuss them with their Band members. **Secondly, many of the Indians were suspicious that the Government's interest in the matter heralded some undesirable change in their way of life and as a result were reluctant to give the matter the consideration it deserved and to express definite opinions.**

At a number of meetings Indians who claim to have been present at the time when the Treaties were signed stated that **they definitely did not recall hearing about the land entitlement in the Treaties.**(Parc 1/1 11-5 1933-36:4).

- 1959 The Commission recommends that reserves not be established in the N.W.T. because 1) **the Indians do not want to live on reserves**, 2) **the Indians would not be able to make a living from reserve lands**, and, 3) **the establishment of reserves would "impede the social and economic advancement of the Indians of the Mackenzie District, as it would segregate them from the rest of the population."** The Commissioner writes that Indians are, at present, squatters. Title to the land should be acquired but not set aside as reserves under the Indian Act. The Commissioner recommends that individuals receive fee simple title (Parc 1/1 11-5 1933-36:7).

The Commission recommended that the Treaties be renegotiated and that in lieu of the land entitlement Indians be given: 1) Fee simple title to lands on which they live and small parcels for homes, 2) Cash settlement of \$20.00 per acre to be held in trust by the government for use under the conditions of the Indian Act, 3) An annual payment of one percent for mineral and gas, and oil, of that portion of land described in Treaty 8.

- 1968 Ogden Commission investigating land entitlement under the Treaties writes to Director of Indian Affairs Churchman:

I learned during my last trip through the District of Mackenzie that the Bands while not yet ready to come to grips with the land problem **do want specific and direct answers to a number of questions most of which deal with lands, areas in which land is available, mineral rights and alternatives to taking up reserves.** They are also **questioning their security to the settlement lots they presently occupy.** (Parc 1/1:2)

- 1968 Ogden records these observations on Treaty 8 Bands:

Hay River Band - June 28, 1968

The Hay River band is, in my opinion, a split band insofar as their understanding of the Treaty is concerned. . . . Because the Chief [John Lamalice] was absent in hospital, the band **refused to have a meeting and at the same time, none of the people I talked to would talk about the Treaty,** because they felt the Chief was their spokesman and he was the only one who should talk to me on such a serious matter. However, my past experience with this band is that if and when the Department is in a position to discuss a settlement of the land entitlement provisions of the Treaty, they will elect to take up reserves. As you know, there is a considerable amount of traffic between Hay River band and the Slaves . . . the Hay River people are fully aware of the wealth that the Hay Lakes band has come into as a result of oil discoveries on their reserve. . . .(Parc 1/1:3)

Yellowknife Band - June 29, 1968

Here too, the Treaty was outline in rather general terms and again emphasis was placed on the land entitlement provisions. Chief Joe Sangris, speaking on

behalf of his band, declined to give any opinion as to the path that the band might follow when the settlement of Treaty land entitlement question takes place. **The chief informed me that Treaties were very important to his people, and therefore he wanted to have an opportunity of going over the printed material I have sent him with members of his band** before he would feel free to talk with me. . . . The Chief has asked me to return to the Yellowknife area some time in late August . . . (Parc 1/1:3-4)

Snowdrift Band - July 3, 1968

In my opinion, we had a very good meeting attended by the majority of the men and women in the settlement. I can only conclude that there is very little understanding of the terms and conditions of the Treaty No. 8. In addition, the band now has a young and recently elected Chief **who wisely wants to review the Treaty** not only with his band, but with the resident Missionary and their elected member of the Northwest Territories Council before we get into any serious discussions. **Informal talks with the band lead me to believe that they are not interested in the reserve system**, but at the same time, they have not as yet formed any opinion as to what they might ask for in lieu of reserves.

Ogden recommended that: 1) Follow up visits be made to the bands, 2) that a flexible policy be announced with respect to land entitlement 3) That there should be an identification of land available, and, 4) That the Department proceed slowly with the settlement so that it would not be criticized for being dictatorial. (Parc 1/1:29-10)

Erasmus and Sanders write of treaties signed in Canada:

In some cases in this country, we have treaties over a hundred years old by which, very clearly, original land was to have been set aside for native people. After a hundred years and more, the land still hasn't been put aside. Meanwhile, governments have repeatedly invited people from all over the world to come cut down our trees and get a square mile . . . two square miles . . . ten square miles of land. Although everyone agrees that our people have lived here for thousands of years . . . there is not a square centimetre that is recognized as indigenous territory.

First Nations regularly confront governments with their claims to entitlement, and the government can't deny the validity of such claims. But instead of recognizing land as indigenous territory, they seek to settle claims by exchanging historic rights for "fee simple" ownership, so the land can be treated like every other piece of private property in Canada.

. . . Outside of this one agreement [the Gwitch'in agreement], no Dene land has ever



been surrendered. Yet there is not even a small piece of the vast remaining territory that a Dene can use to build a home. Instead, our people must use a foreign system of government to obtain a building permit. (Erasmus and Sanders 1992:9-10)

The original land base agreed to at treaty time has continued to be **expropriated** for *bridges and municipal expansion*, military exercises and railway and highway right-of-ways, **generally without compensation**. In many cases, First Nations are still waiting to have the land entitlement of one-hundred-year-old treaties fulfilled. (Erasmus and Sanders 1992:6)

Fumoleau (1976:215) writes of the contradictions and unfairness involving the government and land settlements:

To date, there has been no land reserved for the Indian people of the Treaty 11 area. In sharp contrast are the Government's concessions in two famous land settlements. In 1867, the Hudson's Bay Company surrendered its trading monopoly for £300,000. It was permitted to claim and select 1/20th part of the land, anywhere in the fertile belt, retaining all rights to that land. The Canadian Pacific Railways Company received land grants of approximately 25,000,000 acres, as well as generous tax exemptions.

The Dene did not agree to live on reserves when Treaty 8 was first negotiated and have resisted negotiating the issue since that time. While the government provided a formula for the setting aside of lands this was a unilaterally devised and imposed recipe. Conditions in the Northwest Territories are not suited to agriculture, and it has always been recognized that the land base provided in the treaties would not be enough to support hunting, fishing and trapping. Like other provisions of Treaty 8, reserve lands and land in severalty issues are still outstanding. The government is obligated to fulfil the provisions laid out by the Commissioners for Treaty 8 when the Indians are ready to do so. Because there was no agreement at the time the treaty was signed both reserve land and land in severalty issues need to be negotiated bilaterally with the Dene groups involved. Keeping in mind the very generous grants made to others, and keeping in mind that the Dene have not surrendered title to the land, reserves should be as the Commissioners' reported "a fair portion of land."

### 3.6 Dene Understanding of Social and Economic Welfare Rights

Like medical care, social welfare issues were of great concern at Treaty 8 negotiations

in 1899. Fumoleau quotes Inspector Routledge's Report (for 1899):

During my visit from Fond du Lac, [Indians from] Great Slave Lake [Snowdrift] visited me. They were in wretched state, having travelled some 150 miles on a scanty allowance of fish, to make known the condition of their people. (Fumoleau 1976:54)

Even though their concerns are not mentioned in the text of Treaty 8, (nothing is mentioned about social welfare), the Commissioners' Report gives the government's version of what happened:

Some expected to be fed by the Government after the making of treaty, and **all asked for assistance in seasons of distress** and urged that the **old and indigent** who were no longer able to hunt and trap and were consequently often in distress **should be cared for by the Government.**

We pointed out that the Government could not undertake to maintain Indians in idleness; that the same means of earning a livelihood would continue after the treaty as existed before it, and that the Indians would be expected to make use of them. We told them that the Government was **always ready to give relief in cases of actual destitution**, and that in seasons of distress they would without any special stipulation in the treaty **receive such assistance as it was usual to give in order to prevent starvation among Indians in any part of Canada**; and we stated that the attention of the Government would be called to the need of some special provision being made for assisting the **old and indigent** who were unable to work and dependent on charity for the means of sustaining life.

Dene have a different interpretation of what happened. Pierre Michel was told this about the understanding of social assistance:

Chief Drygeese said, "My people have lived here many years without you coming to bother us. We have lived without your money to this day. My people will continue to live as they were before and no White man will change that . . . You will in the future want us to live like White man does and we do not want that. . . ."

We will not be around when our young children grow up, they will never remember this, but you people will, and the promises that have been made here will not break. Our people in the future will continue to receive Treaty money, and you people will help my people when they are in need of assistance." (Pierre Michel interviewed in 1971 by Elizabeth Petrovitch, in Fumoleau 1976:97)

Jean Marie Beaulieu also says that the Dene did not ask for assistance, but that the Commissioners' wanted to give it to them. This is an entirely different picture than the one presented by the Commissioners:

We heard you were poor down here, we heard this and we wanted to give you some money to live with and some rations too. . . We are just trying to help you. (Fumoleau 1976:96).

That the Indians were relatively self-sufficient is recorded by the Northwest Mounted Police and Indian Affairs Officials in 1901:

. . . in the northern country in 1901 there have been a few cases where relief was absolutely necessary, but it has been among very old Indians, who are unable to work for themselves . . . or a few who were too ill for themselves and with no one to work for them. These are all cases that would probably have perished of starvation had not relief been given . . . One hears occasionally of cases of extreme hardship, where Indians and their families [have hunting unsuccessfully]. . . but their cases are rare.

. . . The Indians generally are well behaved in this part, and are prospering. I may say that since Treaty payments a few isolated cases have arisen necessitating the issue of temporary relief.

In 1903, the Chipewyan, Fort Smith and Fond du Lac people were described as "prosperous in their way, fur plentiful everywhere and prices high. The provisions left at the point for the sick and destitute go a long way to aid those who are too old to hunt or rustle for themselves" (Inspector West in Fumoleau 1976:111). In 1908, the Yellowknife and Dogrib bands were described as well dressed and fairly well provisioned" although they had a bad fur year (Inspector Pelletier in Fumoleau 1976:11). Times were more serious when the resources failed to come, like when the caribou failed to appear in 1913. Clearly, most Indians were not dependent on assistance. The Commissioners pointed out to the signatories of Treaty 8 that "they were supposed to maintain their livelihood", and the Dene signatories understood this as well. They had no wish to be dependent.

Whatever was promised, no matter who requested (or wanted to give) assistance, it becomes clear that the Dene at the signing of Treaty 8 were guaranteed certain mutually understood benefits. Treaty guarantees (aid in periods of distress and care for the old and indigent), however, were not written into the text of Treaty 8. The Government, apparently

disregarded the promises made by the Commissioners which included: the promise that the government was always willing to give relief in cases of destitution; the promise that, when in distress Indians would be given aid; and the promise that government would be notified about the request for the old and indigent. As Price (1979:98) points out:

What is important in the treaty is not the specific promises that were made, but the fact that the government agreed to provide health care and social services to the **extend feasible**. It was not the understanding of the Indian people that they would be restricted forever to what was available in 1899. Some of the elders specifically remember the promises of care for the aged.

A broad understanding is seen in Pierre Frise's testimony who, at the negotiation of Treaty 8, understood that "if they [Dene people] took the money they [the government] **would help the Indian people out as long as the sun doesn't go back . . . and the river doesn't flow back they would help the Indian people**" (Paulette 1973:5:302-312). The Dene interpretation of the assistance clause under Treaty 8 is broad one where the Indians would share the land and get the assistance for they needed forever. James Cornwall, who witnessed the signing of Treaty 8 at Lesser Slave Lake, had the same interpretations, and wrote in a signed affidavit that the Commissioners promised:

The old and destitute would always be taken care of, their future existence would be carefully studied and provided for, and every effort would be made to improve their living conditions (Fumoleau 1976:75).

Yet the Treaty provisions for assistance, in exchange for sharing the lands with non-natives, have not always been honoured. Assistance has not always been seen as a right under Treaty 8 but as a privilege or as a gift. As Bishop Breynat wrote of social and economic treaty promises:

After having been a witness to the Treaty and seeing the Indians' interests handled since, I often wonder how many officials, . . . may have ever read the text of the Treaty.

Would it not be more advisable to have a copy of the Treaty handed over with every new appointment, with a strong recommendation to fully comply with the spirit of the

Treaty . . . (in Fumoleau 1976:215)

### 3.7 Dene Understanding of Medical Care Rights

Prior to the signing of Treaty 8, it had been the Hudson's Bay Company who was charged with giving the local area residents medicines and relief in times of destitution. A letter to Thomas White, Superintendent of Indian Affairs indicated the Hudson's Bay Company was reluctant to continue providing medicine when the fur trade had become open to competition from other trading companies. As indicated in this letter, parliament did not want to pay the bills for Indians who were in "the unceded portions of the Territories" (RG 10, File 19, 502 Pt. 1). The desire to have medicines and assurances in hard times is recorded as one of the reasons that Indians wanted treaty.

At a period in history when they were being decimated by diseases brought to their territory by white men, it is natural that the Indians in Treaty 8 area would be concerned about being provided with medicines and medical care. Both had been available through the Hudson's Bay Company and came to be a part of the package of the benefits that were similarly expected by government. (Task Force 1986:14-15)

The Commissioners' report records that medical care provisions were important conditions in the signing of Treaty 8 at Fort Smith:

They requested that medicines be furnished. At Vermilion, Chipewyan and Smith's Landing, **an earnest appeal was made for the services of a medical man.**

**We promised that supplies of medicines would be put in the charge of persons selected by the Government at different points, and would be distributed free** to those of the Indians who might require them. We explained that it would be practically impossible for the Government to arrange for regular medical attendance upon Indians so widely scattered over such an extensive territory. We assured them, however, **that the Government would always be ready to avail itself of any opportunity of affording medical service** just as it provided that the physician attached to the Commission should give **free attendance** to all Indians whom he might find in need of treatment as he passed through the country.

The presence of a medical man was much appreciated by the Indians, and Dr. West, the physician to the Commission, was most assiduous in attending to the great number



of Indians who sought his services.

Fumoleau (1976:113) states that:

Although no article of Treaty 8 made any reference to medical assistance, the Treaty Commissioners had promised medicines and care to the Indians, and "assured them that the Government would always be ready to avail itself of any opportunity of affording medical services."

The Oberle Task Force reports that there were no references made to medicines, medical care or a "medicine chest" in the text of the treaty itself (Appendix A of Task Force 1986:14-15). Obviously there were discussions of health care with the Commissioners. Why then does the **written version** of Treaty 8 makes no provision for health care? We know that, at the request of the Indians, the Commissioners committed the government to providing free medicines and medical attendance to the greatest extent possible. As the Task Force reported (1986:35-36) the "Indians took these oral commitments as **a guarantee that adequate health care and social services** would follow the signing of the treaty" (Task Force 1986:35-36).

Fumoleau (1976:96) writes that "there is evidence that medical care was discussed, but the Indians had witnessed closed seasons on game (especially buffalo) and were concerned therefore with the protection of their hunting, trapping and fishing rights." Yet there is sufficient evidence to indicate that medical rights and assistance rights under Treaty 11, were an important enough issue, that when violated, almost lead to the refusal to accept treaty payments:

The chief told me that the Indians had decided not to take Treaty any more [Fort Good Hope], as the man in charge of the Hudson's Bay Company post had told them that in former times the Company had always helped the Indians who were unable to help themselves, but since they had taken this money [treaty payments] the Company had to withdraw their support. . . . I told the Indians that the Government had been paying the Company each year for the support of their sick and destitute at least ever since I had been Agent, and for several years previously. All took Treaty, and everything passed out satisfactorily. (Harris in Fumoleau 1976:234).

James Cornwall, who witnessed the signing of Treaty 8, wrote to the Department of Indian Affairs, in 1925, a letter that characterized Treaty 8 as a "scrap of paper" because of the violation of medical rights:

The physical condition of the Northern Indians is of such a nature that unless the Federal authorities take notice of same a most serious situation will arise, and it will reflect on the Government, and will tend to show the violation of one of the important principles as laid down in the Treaty.

At the time of the treaty a solemn compact was entered into whereby the Government undertook to take care of Indians, both physically and materially, so long as the grass grew and the waters ran. This may not have been specifically stated in the Articles of Treaty, but was incorporated in the remarks of the promises made. Twenty-five years have elapsed since first Treaty No. 8 was made. . . . the physical condition of the Indian is much lower today than it was at that time. Tuberculosis, Scrofula, and numerous venereal and blood diseases are prevalent among several Tribes in the North . . . producing a race very inferior to the type that the Government made Treaty with. It is physically impossible for two Medical Men, which is all that is provided by the Government, to take care of six or eight thousand Indians scattered between McMurray and the Arctic Ocean, with no other means of ministering to them other than a brief period at the time Treaty is being paid . . .

All of the foregoing is common knowledge in the north country and is nothing short of a national disgrace: no treaty in the World's history is more justified in being characterized as a "Scrap of Paper", as the lack of intelligent interest displayed by the Government in their treatment of the Indians in the north on the one hand, by the Dominion of Canada representing the King on the other. (in Fumoleau 1976)

Clearly Cornwall felt that the government was not living up to what it promised by providing two doctors and occasional care at Treaty time.

The following chronology documents events related to medical care rights and Treaty 8 in the N.W.T.

- 1900 Dr. Edwards a medical doctor accompanied the Treaty party. He gave advice and dispensed medicines to a large number of people.
- 1901 Dr. Edwards vaccinated some Indians.

Dr. W.H. West, RCMP Inspector travelled with the Treaty party the following years "but his visit once a year could not improve health conditions very much" (Fumoleau 1976:13).

- 1907 Ernest Thompson Seton travelled through Fort Smith and Fort Resolution. He recorded this complaint from Chief Squirrel, the Chief of Fort Smith:

You see how unhappy we are, how miserable and sick. When I made this treaty with your government, I stipulated we should have here a policeman and a doctor; instead of that you have sent nothing but missionaries (Fumoleau 1976:109)

- 1912 The Indian Agent at Fort Smith writes: "A permanent medical officer at this point would be a great benefit to the Indians" (Fumoleau 1973:113-114).
- 1913 Catholic Church (Grey Nuns) opens St. Ann's hospital at Fort Smith. "It is impossible for Dr. McDonald stationed at Fort Smith, to visit with any degree of frequency such posts as Fort McMurray, Fort Chipewyan, Fond du Lac, Fort Resolution, Hay River, [etc.]" (Conroy in Fumoleau 1976:114). "The Government paid the hospital an allowance of one dollar per day for each patient" (Fumoleau 1976:132)
- 1916 A second hospital opens at Fort Simpson also run by the Grey Nuns. Now there are two hospitals to serve the Territories.
- 1918 Spanish Influenza hits.
- 1920 Kitto Dominion, Land Surveyor, wrote of living conditions at the time:
- Old Chief Pierre Squirrel of Fort Smith, in addition to a number of white men whom I interviewed, maintains that venereal diseases were introduced into the district . . . Whooping cough and measles annually carry off large numbers of children as well as some adults. Last year 22 or 23 school children died at Providence from these causes . . . The Fort Smith hospital has the benefit of the services of a medical officer of the Department of Indians Affairs. Doctor Macdonald (Fumoleau 1976:132).
- 1919 Epidemics (Spanish influenza), strike and "in the absence of doctors the Indian Agents could only count the dead" (Fumoleau 1976:114)

- 1921 Small pox epidemic strikes from Fort Chipewyan to Fort Resolution.

Dr. Inge [Dr. with the Treaty party] made his rounds of the various camps reporting some 35 cases of smallpox . . . At Fort Resolution we found that a very considerable number of Indians had left fearing the smallpox . . . Doctor Inge reported 6 cases of smallpox. Ordered the police to have them removed to a nearby Island and rationed. . . There have been 89 cases reported with 6 deaths.

Dr. Inge had made several hasty visits, but almost the entire responsibility has fallen on the Sisters of Charity [at the Smith hospital.] (in Fumoleau 1976:114).

- 1924 James Cornwall writes to the Department of Indians Affairs (summarised above).

- 1927 The Commissioner of Indian Affairs, Northwest Territories is quoted in the June 29th *Edmonton Journal*: ". . . sustained efforts to maintain in numbers and in vigorous health the Native population are being put forward for both humanitarian and because development must depend on Native workers." Fumoleau (1976:264) writes: that the Commissioner's comments were either "a display of ignorance" or "a serious misrepresentation of the facts. Deaths from tuberculosis alone outnumbered births in most places. Many infants died a few months after birth. Most families lost parents and children alike. Periodic outbreaks of small pox, measles, and Spanish flu took a heavy toll over the years. Far from maintaining their 'numbers and vigorous health', the Indians of the Mackenzie District were about to endure an ordeal unprecedented in their history."

- 1928 Bourget visited the Indians to pay treaty. Many of the headmen had died including Susie Drygeese, and Francois Drygeese. Jean Godsell wrote that a Yellowknife village was deserted. Schools at Resolution, Hay River and Fort Providence were effected by the epidemic and although 300 people died in the district the school only lost one pupil. (Fumoleau 1976:265).

Bourget predicted that as a result of the great flu tuberculosis would be more active. This was realized a few years after the epidemic. "Every band asked for a resident doctor, and they were told 'that the appointment rested with the

Government, but the Agent would favourable recommend it' " (Fumoleau 1976:266).

1931-1934 Ottawa is increasingly reluctant to spend money on medical care for Indians.

Between the years 1931 and 1934, the total budget for Health Services for all of the Indians in Canada (110,000) dropped from \$1,050,000 to \$793,000. These figures included salaries for doctors and nurses, and transportation. In 1934, the Government was paying medical care expenses of \$45,566 for 3,854 Indians in the Northwest Territories. (Fumoleau 1976:267)

1935 Dr. Bourget resigns. During his last two years as Agent at Fort Resolution the Indians had been in extremely unhealthy conditions. (Fumoleau 1976:267)

1936 Bishop Breynat writes a memorandum to the Government. The topic was the physical and economic conditions of the Indians of the Northwest Territories:

Having lived among the Natives of the North as a missionary for well over 40 years, I feel that I am reasonably well qualified to give an opinion as to their physical state and their means of support. . . . During the period since treaty was made with the Territory Indians, a matter of 30 years and over, their physical condition has gradually deteriorated, until, at the present time, it is quite alarming - whole families die off, bands containing many families have been wiped out, infant mortality is so high that it is difficult to believe. . . . at Yellow Knife River they had six deaths in one month, out of a population of a little over one hundred. . . . In every camp widows may be found, more or less derelicted, and often conditions . . . if made known to the Press, would bring nothing but discredit to the Government. Tuberculosis and scrofula are very prevalent . . . the resistance of the people to any kind of sickness is gradually becoming less. As the economic conditions are affected by the physical, especially for hunters and trappers, as their work is strenuous and out of door during the winter season, sickness of any kind prevents a trapper or hunter from following his vocation . . . . when they do not kill, they do not eat. Their health is of vital importance; if the head of the family is unable to secure any food, they are all hungry together.

Many factors have contributed to the present health state of the Indians . . .



Treaty brought them into union under a Chief, annuity kept them at the posts longer than formerly and they contracted many white habits.

Breynat also points out that the Doctors in the North attend not only Indians but white men as well (whose number were increasing every year). (Fumoleau 1976:373).

- 1937 Charles Parker inspected the Mackenzie District in 1930 and presented a report to the Northwest Territories Council. He had this to say about the health of the Dene: "The crying need of the Indians in the Territories, apart from justice in hunting rights, is the building up of their health. To a layman this is startlingly evident and I think some special attention should be given by our Medical Branch to this important situation. If we cannot give the Indian his full freedom of to live the life of an Indian at least we should make a serious effort to preserve his health. This is a matter for professional inquiry and action and I suggest some movement along this line" (in Fumoleau 370).
- 1937 The Director of Indian Affairs advised its agents that the Department expected a reduction in the cost of medicines by 50 per cent. Further, there were no funds for tuberculosis - surveys, treatment in hospitals or sanitoriums - nor was there to be treatment for chronic illnesses. The Department was only to give care to those suffering from acute illnesses. (Fumoleau 1976:267).
- 1938 Measle outbreak. Three Indian doctors in the region to act as doctors and Indian agents. Three additional doctors act as Health Agents for the entire N.W.T. "Group these six and wonder how they can attend patients spread over 1,000,000 square miles. In the same area there are five hospitals, four of them operated by the Roman Catholic Church, the fifth operated by the Anglican church. Even under ideal conditions it would be impossible for so few doctors with these hospital facilities to properly handle sickness" (Breynat in Fumoleau 1976:383)
- 1939 The Department directed the Indian agents across Canada to reduce the stay of Indians in the hospital in order to save money. It also suggested that "It should not be difficult

- 1960 A reply to the above letter: to Dr. P.K. Moore (Director of Indian and Northern Health Care Services, Ottawa) from H.M. Jones (Director Indian Affairs Branch, Ottawa) dated September 21, 1960 which neither affirms nor denounces treaty rights and the applicability of the Commissioners' Report in this case:

The Acting Superintendent, Fort Smith Agency has written the attached letter concerning free medical aid to Indians . . . .

It is, of course, difficult for our field officers to give an adequate explanation to the Indians on this kind of question and I think you could provide a statement in light of the Commissioner's report which the superintendent could read to the Band Council. (PARC 1/1 11-5 1933-1965)

- 1975 A complaint is made that there is not medical care in some communities:

We have a full-scale Catholic Mission, this is the only way I can describe it, a full-scale Catholic Mission in Fort Res. The mission used to employ many of the people, many of the working force from Fort Res in their farming, fishing, logging, milling, cooks, nurses' aides, hospital staff, and also on the boats that the mission used. The mission closed, leaving only one priest and many people out of work. **With the closing of the mission went the hospital, the school, the doctors, and the nurses. Now the closest doctor and hospital is 107 rough road miles away at Hay River, or again 182 miles away at Fort Smith.** (Testimony given by R. Orbell, Fort Resolution, at the Mackenzie Valley Pipeline Inquiry - Proceedings at Community Hearings. Vol. 32, October, 1975. pp. 3034).

It is clear from the chronology that the government has not honoured its promises for medical care for the signatories of Treaty 8, either in the past or in recent times. Many communities still do not have adequate care, and travel to the nearest hospital is expensive. The Commissioners wrote:

We assured them however that the Government **would always be ready to avail itself of any opportunity of affording medical services** just as it provided that the physician attached to the Commission should **give free medical attendance** to all Indians whom he might find in need of treatment.

Richard Price writes on the Indian understanding of health care under these promises:

The Indian people apparently understood this as a general commitment to provide

health care. Today the elders say that Indians should have doctors, medicine, hospital care, and medical aid free or charge as a treaty right. What is important in the treaty is not the specific promises that were made, but the fact that the government agreed to provide health care and social services to the **extent feasible**. It was not the understanding of the Indian people that they would be restricted forever to what was available in 1899. Some of the elders specifically remember the promises of care for the aged. (Price 1979:98)

Because Treaty 8 Indians do not understand their rights to be frozen at 1899 standards, they claim, as a treaty right, free access to doctors and medicines (promised in the Commissioner's report), as well as access to hospitals, dentists, rehabilitation facilities and other special care institutions. They do not agree to the plain meaning approach which views their rights only as a commitment to provide medicines and the occasional services of a doctor. A broad and liberal interpretation of medical rights were understood and are required when viewing health care rights under Treaty 8, which was "to help the Indian people out" to "help them out with medicines", "so that this way they could live good."

Fumoleau (1976:114) writes of Treaty 8 medical care provisions in the N.W.T.:

The Indians had asked for medical care before signing the Treaty. It had been promised to them. Pitifully little was provided in the years that followed. How much more could have been done and was not is a question that history does not answer.

And yet, in 1924 Louise Rourke had one answer to that very question:

The bi-yearly visit of the doctor is, of course, a farce. Over and over again there are **deaths amongst people which might have been prevented had there been a doctor within a reasonable distance**: over and over again the cry goes out: "send us a medical man." But nothing happens . . . (in Fumoleau 1976:229)

### 3.8 Education and Rights Under Treaty 8

The text of Treaty 8 states that:

**FURTHER, Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as to Her Majesty's Government of Canada may seem advisable.**

In Treaty 8, the only provision which relates to schools is as follows: "Further Her Majesty agrees to pay the salaries of such teachers to instruct the children of the said Indians **as to Her Majesty's Government of Canada may seem advisable.**"

Upon referring to the report of the Commissioner appointed to negotiate this Treaty I find it stated that the Indians were assured that there was **no need of any special stipulation as to education** as it was the policy of the Government to provide in every part of the country as far as circumstances would permit for the education of Indian children.

The Commissioner in referring to the general characteristic of these Indians say that it is not probable that they will, while present conditions obtain, engage in farming and that the great majority of them will continue to hunt and fish for a livelihood. . . .

From the above you will see that these Indians are of nomadic habits and in my opinion are **not yet in a position to make use of the educational advantages offered by boarding schools.** These schools are of greatest assistance to the Missions in the work of making converts and it is therefore natural that they should be desirous of having as many schools of this class as they can obtain assistance for. I do not think that the **Government is called upon to furnish provisions to feed, clothe and educate nearly every Indian child in the Treaty,** especially as their residence of from eight to ten years in the school will . . . unfit them to earn their living in the surroundings in which they would be placed on leaving school.

The returns for the schools now in operation show that the children are taken in at a very early age, and it is only such children that parents are likely to part with, as the older ones are useful to them.

I think that the Department might **safely move slowly in the direction** indicated by the Bishop but as the Indian Commissioner and Mr. Inspector Macrae have discussed this subject with the Bishop, I think that their opinion in the matter should be had. (RG 10, Volume 3952, file 134,858).

In a letter from Macrae to the Honourable Superintendent of General of Indian Affairs Ottawa, dated December 7th, 1900, discusses the education provisions in Treaty 8 as follows:

Whilst in Treaty 8 during this past summer a point was made in obedience to your orders of inquisition closely into educational requirements of the Indians. . . .

The obligation of the Government in respect to education under treaty 8 is contained in these words: "Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as Her Majesty's Government of Canada may seem advisable." **This appears to be the promise that day schools will be established,** but the general construction put upon the clause is, **that Indian children will be educated at Government expense in such manner as the Government deems best.** That this construction is fair may be seen from the remarks of the Treaty Commissioner contained in their report to you, namely, "As to education the Indians were assured that there was no need of any special stipulation, as it was the policy of the Government to provide in every part of the country, as far as circumstances would permit, for the education of Indian children."

The Establishment and maintenance of **day schools is at present out of the question** because the Indians are not evincing, and are not in the near future likely to evince, and [inclined] towards collective settlement. **Boarding schools, therefore, must be used if education is to be attempted, and it has only to be decided to what extent these shall be encouraged.**

All persons in the north with whom the matter of Indian education has been discussed agree as to its importance, not only as an economical measure to be demanded for the welfare of the country and the Indians themselves, but in order that crime may not spring up and peaceful conditions be disturbed, as that element which is the forerunner and companion of civilization penetrates the country and comes into closer contact with the natives. That **benefit** will accrue to both the **industrial occupants** of the country covered by the Treaty and to the Indians by weaning a number from the chase and inclining them to industrial pursuits is patent to those who see that [the] growing need of intelligent labour must occur as development takes place, and that the diminution in fur and fish demands a decreased pursuit of both, if those who are to continue such pursuits are not to encounter an increase of hardship in a mode of life which already entails a great deal. (RG 10, Volume 3952, file 134,858).

- 1909 A residential school had opened at Fort Providence in 1867 another opened at Fort Resolution in 1909. Fumoleau provides background to education:

Two day schools operated in the Northwest Territories. **Attendance was not compulsory, and since few parents and children could see the benefit, enrollments were consistently low.** The residential schools were first opened as orphanages and for a long time were "essentially hostels for unwanted, orphaned, and diseased children." Proportionately few children attended these schools.



The government supplied beds and mattresses for this latter residence, and it gave a yearly allowance of \$72.00 per student. (Fumoleau 1976:143)

Metis children whose parents had received script saw no benefit.

- 1911 Yearly allowance "was raised to \$125 in 1911, following a visit to the Mackenzie District of the Minister of the Interior and Superintendent General of Indian Affairs, the Honourable Frank Oliver. Until then he had not favoured the boarding school system. But after seeing the hard living conditions of the people and having inspected the schools, he concluded that if Indian children were to receive any schooling it could only be provided by the boarding schools"(Fumoleau 1976:143).

- 1920 The following schools were open in Treaty 8 area in 1920:

Fort Smith Day School (Catholic)  
Fort Resolution Boarding School (Catholic) - 72 students

These schools gave instruction in the manual arts, as well as in English language instruction, and lessons in health, cleanliness, sanitation, and first aid. Girls were instructed in cooking, sewing, fancy work, and general housework. Boys were taught agriculture and building (Fumoleau 1976:143).

- 1920 Fumoleau writes of education during the first twenty years of Treaty 8:

Education will be offered "in such a manner as the Government may deem advisable," reads the Treaty text. The school system operating in the Mackenzie had been organized by the Catholic and Anglican clergies more than fifty years before the Treaty. **It continued for more than twenty years after, without any noticeable benefit to the Indians resulting from the Treaty promise.** The Federal Government had accepted responsibility for education and it was not meeting it. (Fumoleau 1976:215)

- 1936 Breynat writes:

"In order to remedy such a pitiful condition education should be made compulsory for all the orphans of school age and the Treaty annuity should be given directly to them as pocket money for little fancies.

When they leave school, the Agent or the Church should see that they are placed with some reliable and good people who would train them to make their living by fishing, trapping, and hunting.

A few years ago on my recommendation, the Department of Indian Affairs sent a circular to that effect to his agent in the North. The circular has been a dead

letter so far"(in Fumoleau 1976:376).

1936 Breynat wrote of the educational conditions in the Territories:

"There are 11 schools in the Territories. Five of these are day schools. Six are residential schools. The Anglican Church operates five of these, the Roman Catholic Church has six. And despite much criticism levelled at residential schools by persons making short visits to the north, they are the only way in which satisfactory work can be done with these children. **Much of the agitation for day schools originates with white men who want educational facilities for their own children.** These facilities should be provided by the Northwest Territories department which receives all revenues from hunting and trapping licenses, and royalties from furs and minerals."

Later in the same report he outlined the type of education children were receiving:

Children from the residential schools are usually healthier than the average Indian child. They have received proper food, medical attention and lessons in hygiene and cleanliness. The boys have learned how to use tools. They are equipped to do business with white men on their own footing. The girls learn to cook, sew and look after a home. Most of these boys and girls grow into successful men and women. As in any other case, some of them do not (in Fumoleau 1976:382).

1936 During the year 1936, the total expenditures of the Department of Indian Affairs for the education of adults and children in the Northwest Territories (3,854 persons) was \$37,865.16. (Fumoleau 1976:215)

1939 Breynat wrote of Treaty promises and education:

The average Canadian believes that Canada has been generous in her treatment of native peoples. . . .

The government has made an attempt to keep the definite terms of the treaty which set out regular annual payments and gifts. . . . **But the indefinite clauses of the treaties and the promises have not been kept.**

Some money is spent for medical services and education. . . .

**By treaty the government agreed to educate the Indians.** They do this by giving grants to the churches to aid them to maintain schools. But the churches have had to build schools at their own expense, while elsewhere in the Dominion palatial structures are built out of government funds. (in Fumoleau

1976:381-382)

1944 In 1944, the budget for education decreased from \$37,865.16 in 1936, to \$37,566.00. (Fumoleau 1976:215)

Fumoleau (1976:141) writes of education promises:

**In the first decade of this century, the Canadian Government did not acknowledge or accept much responsibility for the education and health care, or for the social and political life of the Indian people of the Mackenzie District. When Breynat asked the Department of Indian Affairs for financial assistance for the northern schools, he received this reply: "The Mackenzie, being a missionary field, is the Church's responsibility."**

Fumoleau credits the church with providing schools and hospitals, industrial and agricultural training, ministering to the sick and destitute. He points out the limitations of the missionary who often saw the Indian people one month out of twelve (Fumoleau 1976:142).

The people who were present at Treaty signing were assured that the government would pay the salaries of teachers for the education of children, Indians children would receive education as far as circumstances would permit, and that there would be religious freedom in the choice of education. Non-Dene people have in contemporary times defined Treaty 8 education rights minimally:

The interpretation of the intent of these provisions is that they were minimal at best. Little more was promised than that education would be provided for Indian and other Canadian children. As education eventually came to be compulsory up to the age of 16, it would certainly not be difficult to interpret the spirit of these treaty as being one that would see that level of education provided as a matter of right. It is difficult to read any more than that into the education provisions however. Unlike other treaty areas, there is no provision for a schoolhouse on each reserve. . . . (Task Force 1986:15-17 Appendix A)

If read carefully, Macrae's letter (cited above for 1900) reveals that while "The Establishment and maintenance of **day schools is at present out of the question**" they might not be in the future. Further, his letter indicates a commitment to education in order that Indians might enter the industrial work force as active participants if, and when, there were problems in traditional modes of life:

That **benefit** will accrue to both the **industrial occupants** of the country covered by

the Treaty and to the Indians by weaning a number from the chase and inclining them to industrial pursuits is patent to those who see that [the] **growing need of intelligent labour must occur as development takes place**, and that the diminution in fur and fish demands a decreased pursuit of both, if those who are to continue such pursuits are not to encounter an increase of hardship in a mode of life which already entails a great deal. (RG 10, Volume 3952, file 134,858. Cited previously).

Aasen (1993:81) wrote of Macrae's position toward education:

His account implicitly suggests that as circumstances permit, educational rights under the treaty change. He also mentions to some degree the advantages to industrial training. His letter indicates that the Department in Ottawa did not see treaty rights as frozen and inflexible, but as evolving.

This is confirmed by Breynat's understanding of educational rights:

Unless the Government is ready to enforce compulsory education, a system which I would not recommend, before opening new schools it would seem wise to wait until our Indians show a better appreciation of education. (in Fumoleau 1976:374)

It is difficult to determine the Dene interpretation of Treaty rights in 1899. This situation arises because priests were an influential force in the treating process. Further, most reports on Indian educational rights are by written by priests who had a vested interest in pursuing educational rights under treaty. Perhaps some Dene were sending their children to residential school and were Christians at this time. Others may have been sent to residential schools against their will (as is documented for the B.C. case, Aasen 1993:84) and this would constitute a violation of the rights granted under the freedom of religion clause. Breynat in 1936, however, provides insight into Dene desires for education when he wrote that:

it is not an easy job to induce the parents to send their children to school, although they gradually realize the advantages of a good school training. Better results would be obtained if all the Agents would give a little more of their time and their heart to recruiting, or at least to the recruiter. (Fumoleau 1976: 374).

Today Indians interpret "instruction" to include a wide range of education and vocational types (university, up-grading, vocational training, day schools with native curriculum, attendance at professional seminars). It would not be difficult to interpret the spirit and intent of Treaty education rights to include vocational training because as McCardle

and Daniel's (1976) article points out pupils at residential schools were engaged in daily chores like farming, and that "it appears that the philosophy, if not the curriculum of Indian schools after treaty required some form of 'industrial teaching'" (McCardle and Daniel 1976:88). Indians do not view educational treaty rights as frozen at 1899 standards. Like Macrae's letter on policy indicated, and as Breynat understood, education provisions evolve. There was the understanding that the government would help Indians find a place in the industrial world and would wait until the "Indians showed a better appreciation of education."

### 3.9 Summary

This section has focussed on specific treaty promises as they relate to clauses in the Treaty and the Commissioners' Report. From this section it may be concluded that the Commissioners' Report comes closer to the Spirit and Intent of Treaty 8 than the Text of the Treaty. The text of Treaty 8 is vague on many of the Commissioners' promises, if they were included at all in the text.

Chronologies of important events and documents that either confirm treaties rights or show violations of these, from many different perspectives, were included. The position that Treaty rights were not frozen in time finds support in both historical and contemporary statements and documents.

### 4.0 THE DENE UNDERSTANDING OF TREATY 8 AS AN AGREEMENT BETWEEN NATIONS

Aasen and Paulette (1993:9-10) write of Treaty 8:

The Chipewyans and Yellowknives do not have any doubt that in 1899, they entered Treaty 8 on a bilateral nation to nation basis. They also do not doubt that Treaty 8 confirms First Nations sovereignty, as supported by the 1763 Royal Proclamation which laid out policy related to Indian peoples and their rights and land. They believe that the Royal Proclamation of 1763, entered into between First Nations and the Imperial Crown, are international agreements which cannot be unilaterally interpreted, defined or limited. Treaty 8 established this relationship between the Crown and First Nations. A fully informed and written consent is required by both parties prior to any changes in their bilateral relationship. Consent is the fabric that maintains the bilateral relationship between the Crown and the Treaty 8 First Nations. The Treaty 8 First



Nations believe in this relationship, and have not consented to altering, diminishing, or in any way extinguishing it. . . . N.W.T. Treaty 8 First Nations entered into the treaty in 1899 based on [the] GREAT LAW - "As Long as the Sun Shines, the Rivers Flow and the Grass Grows." Treaty 8 acknowledges, the laws laid down by the Creator - that the Dene peoples have rights that last forever. In signing Treaty 8, the Dene believe that the commissioners and government understood and recognized this Great Law. The Dene by signing Treaty 8 were acting in a way that was consistent with their convictions. (Paulette and Aasen 1993:9-10)

This segment of the report will examine the Royal Proclamation, the B.N.A. Act, the Indian Act, the Canadian Constitution of 1982, and principles laid out in international law, to clarify and provide support to the position put forward by Treaty 8 Chiefs, in their 1993 interim report to the constitutional development steering committee.

#### 4.1 The Royal Proclamation and Treaties

In 1763 the British were faced with two problems involving indigenous peoples in North America. The first was gaining the trust of the Indian allies of the French and the second problem involved dealing with their own Indian allies' dissatisfaction. The Royal Proclamation of 1763 includes one large section devoted to these ends, as well as outlining British policy in British North America as a whole. The introductory preamble to the Royal Proclamation states:

And whereas it is just and reasonable, and essential to Our Interest and the Security of Our Colonies, that several Nations or Tribes of Indians, with whom we are connected, and who live under Our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominion and Territories as, not having been ceded to, or purchased by Us, are reserved to them, or any of them, as their Hunting grounds

....

The Royal Commission Report titled *Partners in Confederation* writes of this passage that Indian groups are portrayed as:

**autonomous political units living under the Crown's protection and retaining their internal political authority and their territories.** These territories should not be granted or appropriated without **Indian consent.** (Royal Commission 1993:16)

The Commission report goes on to suggest that the Proclamation reflects the King's concern about frauds and abuses committed through land purchases -- against the interests of both the

Crown and the Indians. To convince the Indians of the Crown's justice, and to remove cause of Native discontent, the Proclamation forbade individual purchase of land and laid out the procedure for voluntary surrender (Royal Commission 1993:16). If Indians wanted to sell land it would first have to be purchased by the Crown at a public meeting held for that reason. The Royal Commission suggests that this procedure:

envisages the existence of self-contained Indian nations, which hold their lands under British protection and maintain relations with the Crown. When a nation is disposed to transfer any of its lands to the Crown, it should meet in assembly to deal with the governor or commander in chief of the colony concerned. **The land transfer is effected by mutual agreement or treaty.** The passage presupposes that each Indian nation has an internal political structure that enables binding decisions to be taken in assembly. However, the Proclamation does not lay down the precise procedure to be followed or the degree of consent required, presumably leaving that to be **governed by the law of the Aboriginal nation concerned** or to the inter-societal practise developed in the course of the British-Aboriginal relations.

Of the Proclamation in general, the Royal Commission summarizes that it:

portrays Aboriginal nations as autonomous political units living under the Crown's protection, holding inherent authority over their internal affairs and the power to deal with the Crown by way of treaty and agreement. (Royal Commission 1993:17)

It was the Proclamation which formalized the procedures for treaty making in Canada. (Elliott in Morse 1989:304)

Erasmus and Sanders write that the Royal Proclamation did not remove Native sovereignty, despite the fact that they were under the Crown's protection:

The Crown of Great Britain laid down a process in the Royal Proclamation that set forth the Crown's policy on land negotiations. That policy has never been revoked. In the Royal Proclamation, the Crown recognized that lands possessed by first nations in what was then British North America, would be reserved for them, unless, or until, they ceded that land to the Crown.

The Proclamation could be regarded as the first major legal link between First Nations and the British Crown. And by virtue of that Proclamation, it can be said that First Nations became protected states of the British, while being recognized as **sovereign nations competent to maintain the relations of peace and war and capable of governing themselves** under that protection. (Erasmus and Sanders 1992:6)

The Royal Proclamation supports preexisting title because it states that Indians have rights to the land unless ceded or purchased by the Crown after a public meeting, and with the consent of the Indian people.

The Proclamation also states:

And whereas it is just and reasonable, and essential to our Interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our protection, should not be molested or disturbed in Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them or any of them, as their Hunting Grounds The report of the committee stated that Indians in the Northwest Territories believe they have full and free hunting and fishing privileges as contemplated by the Royal Proclamation and the treaties.

At one extreme is the position of the Indians in the Northwest Territories where since he is almost completely unfettered in utilization of fish and game for food, he can be said to have received full measure of the privilege.

#### **4.2 Treaties and The Principle of Consent**

The Royal Commission (1993) wrote that prior to the constitutional reforms of 1982, Treaties with First Nation could be amended or overwritten by federal statute without the agreement of the Aboriginal parties, as was the case with British Tradition. **"However it did not correspond to Aboriginal concepts of the treaties, which were viewed as sacred pacts, not open to unilateral appeal"** (Royal Commission 1993:25-26).

The language of the text of Treaty 8, however, is problematic in regard to the relationship between Treaty 8 signatories and the Crown. The Treaty lays out, in nation to nation language, an agreement between Her Majesty the Queen and Dene signatories. The Treaty refers to Indians as wards - in need of protection and the paternal care of the government.

There is evidence in favour of the Indian interpretation of the Treaty as a nation to nation agreement, to ensure peace and friendship for mutual advantage, with the government providing protection and assistance in times of need, and with the Dene allowing free passage of Canadians through their land. The text of Treaty 8 states:

ARTICLES OF A TREATY made and concluded at the several dates mentioned therein, in the year of Our Lord one thousand eight hundred and ninety-nine, **between Her most Gracious Majesty the Queen** of Great Britain and Ireland, by Her Commissioners the Honourable David Laird, of Winnipeg, Manitoba, Indian Commissioner of the said Province and the Northwest Territories; James Andrew Joseph McKenna, of Ottawa, Ontario, Esquire, and the Honourable James Hamilton Ross, of Regina, in the Northwest Territories, of the one part; **and the Cree, Beaver, Chipewyan and other Indians, inhabitants of the territory within the limits hereinafter defined and described, by their Chiefs and Headmen, hereunto subscribed, of the other part:-**

WHEREAS, the Indians inhabiting the territory hereinafter defined have, pursuant to notice given by the Honourable Superintendent General of Indian Affairs in the year 1898, been convened to meet a Commission representing Her Majesty's Government of the Dominion of Canada at certain places in the said territory in the present year 1899, **to deliberate upon certain matters of interest to Her Most Gracious Majesty, of the one part, and the said Indians of the other.**

AND WHEREAS, the Indians of the said tract, duly convened in council at the respective points named hereunder, and being requested by her Majesty's Commissioners to name certain **Chiefs and Headmen who should be authorized on their behalf to conduct such negotiations and sign any treaty to be founded thereon**, and to become responsible to her Majesty for the faithful performance by their respective bands of such obligation as shall be assumed by them, the said Indians have therefore acknowledged for that purpose the several Chiefs and headmen who have subscribed hereto.

It is further agreed between **Her Majesty and Her said Indian subjects** that such portions of the reserves and lands above indicated as may at any time be required for public works, buildings, railways, or roads of whatsoever nature may be appropriated for that purpose by Her Majesty's Government of the Dominion of Canada . . .

And with a view to show the satisfaction of Her Majesty with the behaviours and good conduct of **Her Indians**, and in extinguishment of all their past claims, She hereby, through Her Commissioners, agrees to make each Chief a present of thirty-two dollars in cash, to each Headman twenty-one dollars, and to every other Indian of whatever age, of the families represented at the time and place of payment, twelve dollars. . . .

AND WHEREAS, the said Indians have been notified and informed by Her Majesty's said Commission that it is Her desire to open for settlement, immigration, trade, travel, mining, lumbering, and such purposes as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract, **and to make a treaty, and**

arrange with them, so that there may be peace and good will between them and Her Majesty's other subjects, and that Her Indian people may know and be assured of what allowances they are to count upon and receive from Her Majesty's bounty and benevolence.

And the undersigned Cree, Beaver, Chipewyan and other Indian Chiefs and Headmen, on their own behalf and on behalf of all the Indians whom they represent. **DO HEREBY SOLEMNLY PROMISE and engage to strictly observe this Treaty, and also to conduct and behave themselves as good and loyal subjects of Her Majesty the Queen.**

**THEY PROMISE AND ENGAGE that they will, in all respects, obey and abide by the law; that they will maintain peace between each other, and between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians, half-breeds or whites, this year inhabiting and hereafter to inhabit any part of the said ceded territory; and that they will not molest the person or property of any inhabitants of such ceded tract, or of any other district or country, or interfere with or trouble any person passing or travelling through the said tract or any part thereof, and that they will assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this Treaty or infringing the law in force in the country so ceded.**

As we have illustrated throughout this report, the Dene signatories to this agreement understood that they entered a relationship with white people as brothers. Although understanding that they were to maintain peace, from their perspective they did not relinquish their sovereignty, nor did they cede their land. In exchange for white people coming into the region, they accepted treaty money, with much ceremony, and developed a relationship with her majesty where "Nothing would change." That they understood themselves to be her majesties children, or wards of the government, is doubtful. As with the treating process, the Indians assumed that representatives of the government would come and have meetings with them, and seek their approval before making changes that affected them.

As the Royal Commission points out, the Indians view treaties as sacred pacts, which require bilateral agreement to appeal, and are not open to unilateral changes. This view is not based on a misunderstanding, but is based on procedures used by treaty negotiators:

Crown negotiators often emphasized that the treaties were **foundational agreements, establishing or confirming basic and enduring terms of the relationship between Aboriginal peoples and the Crown.** (Royal Commission 1993:26)



Like the Royal Proclamation, the language of the text of Treaty 8 implies a guardian-ward relationship, after recognizing the agreement as a pact between nations. The Dene understand Treaty 8 as a nation to nation agreement. Oral history contains no indication of an implied guardian-ward relationship, or of relinquishment of sovereignty.

#### 4.3 Treaties and International Law

Francois Paulette, addressing the Constitutional Development Steering Committee on December 3, 1993 commented on the Treaty 8 First Nations' view of their relationship with the Crown:

We have a very, very fundamental relationship that we have that has been handed down through our great laws - As Long as the Sun Shines, the Rivers Flow, and the Grass Grows. And those great laws that we have are recognized and affirmed in international law, because international law asks about nationhood. There are four key elements that recognize nationhood. One of them is that people have a territory, we have a territory. [They also talk about population], we have a population. Another key element is the third one, is they talk about entering into treaties, we can enter into treaties, we've done that. And finally, you have a government . . . . And Treaty 8 of 1899, the Peace and Friendship and Goodwill Treaty that we made for the newcomers is based on that, on coexistence. Based on sovereign and independent nations. So, when we talk about coexistence we talk about interdependence.

As stated in Elder testimony, the Indians are to help the white man and the white man are to help Indians. This is what is meant by coexistence and interdependence. Accepting someone's help does not mean that you lose your sovereignty. "Under International law, a weaker power does not surrender its right to self-government merely by associating with a stronger power and taking its protection" (Erasmus and Sanders 1992:7). In signing treaties Indians were to receive certain Treaty rights. Erasmus and Sanders write that:

These treaties represent further legal links between those nations and the Crown. But again, there is no evidence that sovereignty was surrendered." (Erasmus and Sanders 1992:7)

Canadian courts, since the latter part of the nineteenth century, have relegated the First Nations' treaties with the Crown to the level of private contracts, thereby denying their status as treaties in the sense of international law. Yet the Supreme Court of Canada repeated in the *R. v. Simon* case that First Nations' treaties are unique and share some of the features of international treaties. (Erasmus and Sanders 1992:7)

Venne (1991:16) quotes the Black's Dictionary definition of Treaty:

not only a law but also a contract between two nations, and must, if possible, be so construed as to give full force and effects to all its parts.

Smith (1993:11) writes that the Dene view of their treaties as international agreements is supported by legal scholars, such as Cumming and Mickenberg (1872:54-58) and Opekokew (in Zlotkin 1985:300-301). The international status of the treaties is illustrated and supported by the following facts:

1. The British Crown, rather than any department of government or ministry, entered into the treaties;
2. The negotiations leading to the making of the treaties were conducted on the basis of mutual sovereignty;
3. The mutual acceptance of the treaties was in solemn form, accompanied by ceremonies appropriate to the conclusion of international treaties, and;
4. There have been formal adhesions to the treaties, this being the appropriate method for later participation by other parties to international treaties.

At all material times the British Crown acknowledged the title of Indians bands to the territory they occupied, and at no time claimed that the Indian territorial rights were extinguished by occupation or conquest. On the contrary, as declared by the Royal Proclamation of 1763 and subsequent documents, all dealings with the bands were to be on the basis of mutual respect and consent . . . At no time did the British Crown express any doubt as to the capacity of the bands to enter into treaties. (in Smith 1993:12).

Delia Opekokew writes that:

A treaty is a compact or agreement between two or more independent nations, but Canadian governments and courts have used the argument that the Indian treaties were not international treaties, in order to deny Indian nations the right to sovereignty and self-government. European immigrants had to deny the fact that North America was already governed by Indian nations in order to establish their own interest in the land. As this interest developed and expanded over time (from the fur trade, to settlement, to the extraction of resources), official European recognition of Indian title was correspondingly altered and cut back. In the 1971 book *Native Rights in Canada* published by the Indian-Eskimo Association of Canada, the editors state that "it is clear that the agreements entered into with the Indians are neither international treaties

nor simple private contracts." Their evidence for that conclusion is coloured by their source. Their sources are Lieutenant Governor Morris' interpretation and the case law that has been built up in the Canadian courts which is based on arguments developed by lawyers, judges, and parliamentarians whose predecessors were the original early "discoverers" of North America . . . The treaties entered by both the United States and Canada with Indian people are similar, and the treaty-making process outlined in the Royal Proclamation of 1763, applies in both case, as Mr. Chief Justice Marshall expressly relied upon it as an additional ground for his judgement in *McIntosh*. The significant difference is that the United States Constitution confirms their international status because the federal power to make treaties was the basis for both international treaties and agreements with the Indians . . . (Opekokew in Morse 1989:301-302)

Barsh and Henderson (1982) discuss international rights and treaties.

Canadian Indian policy is repugnant to the obligations of treaties in the law of nations, and to the spirit of international human rights instruments to which Canada has acceded. Although Canadian representatives to the United Nations have championed the decolonization of African peoples vigorously, other nations may wonder how this can be consistent with Ottawa's refusal to take Indian tribes' political aspirations seriously . . .

The cardinal principle of Roman international law that treaties are absolutely obligatory on the parties . . . is central to the 1969 Vienna Convention on the Law of treaties. It is "universally recognised" that "every treaty in force is binding upon the parties to it and must be performed by them in good faith." Treaties remain in force **unless modified by agreement** or suspended by material breach of conditions, impossibility of performance, or inconsistency with a peremptory norm of international law . . . **A state cannot relieve itself from the performance of its treaties by enacting contrary domestic legislation. Canada acceded unconditionally to this convention on 14 October, 1970, but since then has renounced the obligatory force of every tribal treaty assumed by the Imperial Crown or the Crown right of Canada.** (Barsh and Henderson 1982:70-71)

When Canada joined the United Nations it was supposed to show respect for:

1. the obligation arising from treaties;
2. the equal rights of nations (large and small);
3. the right of self-determination of all peoples;
4. The right to freely determine political status. (Barsh and Henderson 1982:71)

Outside the U.N. framework, in the 1975 Agreement on Security and Co-operation in

Europe, respect was to be shown for the equal rights and self-determination of peoples and their right to self-determination (Barsh and Henderson 1982:71).

But Canada accords Indian nations none of these rights. The tribes' political status is determined by the *Indian Act*, in which they took no part . . . . The Liberals officially called for social and cultural assimilation of tribal peoples [in 1969], depriving them of the right to political, cultural, religious and linguistic identity that Quebec . . . enjoys. Quebec's rights proceed from no higher source than international law. The difference is ideological . . . . (Barsh and Henderson 1982:71)

Sharon Venne points out that during the early 1980s Indigenous peoples saw the opportunity to bring Treaty issues to the foreground when constitutional negotiations were taking place between Quebec and the rest of the provinces under repatriation of the Constitution from Great Britain. She also writes that Native peoples "were denied any meaningful input in the process" (Venne 1991:9).

Venne states that in most states which have treaties, that these were never in full force and effect, and says that a number of reasons could be cited, but points primarily to racism as the underlying problem.

Canada does not recognize that the Indigenous Peoples are a people under International Law. This is based on racism. There is an overriding presumption that if Indigenous Peoples want to advance their cause, they must do so within the existing legal system of the state. The existing legal system was, of course, imported by the settler governments. Today, there is no recognition that an Indigenous Peoples legal system was in place at the time of the Treaty signing (Venne 1991:16-17).

Although entering into international relations with the signatories to the Treaty, the text of the Commissioners' report reveals that granting any special status or collective rights to Indians was of some concern:

We showed them that, whether treaty was made or not, they were **subject to the law**, bound to obey it, and liable to punishment for any infringements of it. We pointed out that the **law was designed for the protection of all, and must be respected by all the inhabitants of the country, irrespective of colour or origin; and that**, in requiring them to live at peace with white men who came into the country, and not to molest them in person or in property, it **only required them to do what white men were required to do as to the Indians**.

Although Treaty 8 grants its members special status -- rights that other people in

Canada do not have, it is clear from the Commissioners' Report that the issue of granting special rights to one segment of society was of some concern to government. Conflicting statements include:

1. Treaty 8 Indians should receive special rights (for example hunting, fishing, and trapping rights, exemption from military service).
2. Treaty 8 Indians will not be treated differently than other Indians in Canada (education, assistance).
3. All Canadians are subject to the same laws.

The main issue seems to be the inherent conflict between government policy and rights granted under Treaty. But granting these rights under international law would not have been unprecedented. The Royal Commission cites the *Quebec Act* (1774) which confirmed that it was possible to have many different legal systems co-existing within the territory. The principle of the asymmetrical element in Confederation is also seen in the *Manitoba Act* of 1870 (Royal Commission 1993:17).

The Commission makes the point that constitutional law (under the Canadian Constitution of 1982) shows diversity in both origin and content and in legal character. Constitutional law has included instruments like treaties with First Nations, royal proclamations and commissions, statutes, and orders in council.

While signing international agreements with the signatories of Treaty 8, the Commissioners were reluctant to grant special status or collective rights. Perhaps, as Venne has pointed out, the apparent difference between the recognition of Quebec as having international character, and non-recognition of nation status of Native peoples, is based on racism. A clear case is the belief of the superiority of European legal and political systems and the belief in the inferiority of indigenous peoples' systems. Non-recognition of the international stature of native groups is, at least, strongly ethnocentric.

Venne (1991:11-12) discusses indigenous involvement in international affairs:

Canada has never made a serious effort to deal with the concerns of the Treaty Indian



Peoples. There have been a number of attempts by Indigenous Treaty Peoples to advance the cause of Treaty Rights. The Federal Government has met these attempts with silence. . . .

. . . . in the 1990's the Standing Committee on Aboriginal Affairs acknowledged that the spirit and intent of the Treaties has never been dealt with. [While the government has several methods for addressing grievances this] gives the impression of movement when none is, in fact, taking place. . . . Thus, began the long trek to get [an] international review of the Treaties within an International context.

An international review is currently being carried out by the Special Rapporteur to the United Nations, Miguel Alfonso-Martinez. In his First Progress Report on treaties, agreements and other arrangements between States and indigenous populations Special Rapporteur Miguel Alfonso-Martinez wrote that despite their notions of the "inferior" nature of the culture and society of indigenous North Americans one thing is clear. That the Europeans believed themselves to be "negotiating and entering into agreements with sovereign nations, with all the legal implications that such a term had at the time of international relations" (Alfonso-Martinez 1992:23-24). English/Indian relations in North America took the form of treaties for 250 years. Alfonso-Martinez (1992:24) writes:

Such a pervasive utilization of this particular modality of entering into juridical relations **offers solid proof of extensive European recognition of both the international (not internal) nature of the relations between both parties**, and of the inherent international personality and legal capacity of the indigenous part for negotiating and entering into treaty relations, resulting from their status as subjects of international law in accordance with the legal doctrine of those times.

Treaties with North American Indians are international agreements. This he bases on the following elements:

1. Indigenous nations had a territory, a permanent population, a capacity for international relations and their own forms of government. These are four criteria used in international law to determine whether an entity has the capacity to be included under international law.
2. Legal instruments in North America between the 17th century and the 1870s. United States documents reveal that indigenous groups were considered sovereign nations.

3. Alliances between indigenous nations and Europeans, which reveal diplomatic skill by both parties, show a capacity to negotiate and enter into agreements with other (often) international entities.
4. While political models in North America were not characterized by all elements seen in nation-states, their political institutions held their societies together and were characterized by complex expression.
5. International law does not only apply to states but to kingdoms, republics, towns, religious orders and so on.
6. Indigenous nations considered themselves as sovereign with rights to territories, with no limitations for political relationships to advance their interests.
7. In all treaty regions in North America, the treaty making process was conducted based on the recognized capacity of both groups to accept obligations and acquire rights in accordance with legally binding instruments that were formally agreed upon. (Alphonso-Martinez 1992:23-25)

As was pointed out by Francois Paulette, the Dene had a territory, a permanent population, a form of government, and a capacity for international agreement. As this report indicates, the Dene had formed alliances with their neighbours. They entered into Treaty 8 with a definite capacity to negotiate. Treaty 8 was signed with an internationally recognized entity, the Crown. The Dene, while not nation-states, held their societies together -- international principles say that nation-state status is not required before a group of people can be viewed as international entities. That the Dene considered themselves sovereign is obvious in all Elder testimony. That the Dene understood their obligations (for peace and friendship with the newcomers), under Treaty 8, and understood that the promises were binding, cannot be questioned. As with previous treaties with their neighbours, the Dene viewed their treaties as sacred pacts -- "For as long as the sun shines, the rivers flow, and the grass grows".

#### 4.4 The Indian Act

Erasmus and Sanders (1992:8) write how, in 1867, the federal government passed its first Indian Act "the first consolidation of the laws pertaining to Indians."

The Indian Act was passed by federal government because it has exclusive legislative responsibility for Indians and lands reserved for Indians, but First Nations themselves had no input into it. Neither did First Nations' citizens have any part in electing the politicians who legislated the Indian Acts, since native people were not allowed to vote federally until 1960. . . .

The same Department of Indian Affairs that controlled our lives through Indian agents until only recently still exists today. It has 4000 civil servants, and its primary function is to maintain control over native people.

The Indian Act still controls every facet of our lives. It allows a certain amount of local self-government, but there is not a single thing on which we can make a law that does not have to go to a department official. . . . No other municipal government in this country is up against that kind of control. (Erasmus and Sanders 1992:8)

Barsh and Henderson (1982:65) write of the contradictions between the Indian Act and treaties:

The principle instrument of contemporary Canadian tribal policy is the *Indian Act*, and the *Indian Act* is the product of a remarkable process of accretion. In each of the successive "numbered treaties" after 1871, Canada exacted additional submissions and delegations of power from the tribes. **By any normal rule of law, each tribe is bound by what it agreed, and over each Canada has only what power it received.** Yet the *Indian Act* invests the Minister with all powers *ever* delegated by any tribe, to be exercised uniformly over *all* tribes. **This alone repudiates the obligation of all tribal treaties and manifests a racial policy of treating all "Indians" alike regardless of how and under what terms and conditions they affiliated with the Crown.** It explodes as "delusive mockery" the pains taken by Crown officers to negotiate independently each tribal treaty.

Venne (1991:9) writes that at the time of contact many indigenous peoples insisted on a Treaty with Great Britain. When Canada became a state in 1867, under the British North America Act, treaty making was still vested with the British Crown. The Federal Government of Canada was designated as the administrative authority to deal with Indians under section 91 (24) of the B.N.A. Act. Venne writes that this authority:

did not give them the right to impose policies upon Indigenous Peoples which would be **in contravention of the Treaties**.

The Indian Act of Canada, since its incipient start, has been used to suppress the Indigenous Peoples of the land. The Indian Act does not take into consideration the Treaties. **The Indian Act is a contravention of the spirit and intent of the Treaties.** (Venne 1991:9)

Erasmus and Sanders (1992) point out that while the B.N.A. Act provided for internal self-government of Canada by settlers, First Nations were not a party to drafting the Act nor were they a party to Confederation. They describe the relationship between Native Peoples and provinces:

Nevertheless, subsection 91 (24) provided that the federal Parliament would have the authority to legislate for "Indians and lands reserved for the Indians" **to the exclusion of the provincial legislatures**. By virtue of that subsection, the First Nations were placed under the legislative power of the federal government as an agent of the Crown, but not under its territorial jurisdiction. . . . (Erasmus and Sanders 1992:7-8)

Francois Paulette addressing the Constitutional Development Steering Committee (Dec. 2, 1993) stated this about the relationship between the Indian Act, Treaty 8 Nations, and the Territorial government.

Section 91 (24) of the Indian Act treats us like wards of the system. That's unconstitutional. That's unconstitutional to the relationship we made in 1899 - nation to nation bilateral. . . . But we have a difficult time when the government says, "We assured them that the treaty would not lead to any forced interference with their way of life." Because that mode of life has been infringed on for a long time. And you cannot continue that.

#### 4.5 Treaties, the Provinces, and the Territorial Government

Treaty First nations are often opposed to negotiating with legislative bodies other than the federal government. The authority of these bodies to deal with Indian issues is delegated authority. As Venne (1991:11) points out "the provinces did not exist at the time of the Treaty signing. How could they have power over the Treaties without the consent of Treaty Peoples?" Yet provinces, and in this case the Government of the Northwest Territories, have had this authority unilaterally given to them. (The most noted cases are in regard to amendments to the N.W.T. Act -- see historical chronology). One example of unilaterally

extending power to the territorial government occurred in 1960, when the Parliament amended the Northwest Territories Act and the Yukon Act by adding the following subsections to the sections conferring legislative jurisdiction to the territories:

the Commissioner in Council may make ordinances for the Government of the Territories in relation to the preservation of game in the Territories that are applicable to and in respect of Indians and Eskimos, and ordinances made by the Commissioner in Council in relation to the preservation of game in the Territories, unless the contrary intention appears therein, are applicable to and in respect of Indians and Eskimos.

Nothing in subsection (2) shall be construed as authorizing the Commissioner in Council to make ordinances restricting or prohibiting Indians or Eskimos **from hunting for food, on unoccupied Crown lands, game other than game declared by the Governor in Council to be game in danger of becoming extinct.** (Department of Indian Affairs and Northern Development, 1979:Appendix 1c)

By this act, the Northwest Territories Council was empowered by federal statute to restrict the hunting of animals declared by the Governor in Council to be in danger of extinction. Musk-ox, polar bear and barren ground caribou were declared to be in this category and regulations were passed by the Council restricting their hunting by Indians.

Francois Paulette commented on the N.W.T. Act, territorial jurisdiction, and the livelihood promises made in Treaty 8:

And, as I said yesterday, whether there is 10 of us or 20 of us, the Treaty 8 First Nations sitting here today the arrangement is still going to be the same because as far as the N.W.T. Treaty 8 First Nations are concerned we have fulfilled our promise - that you can live in our country freely. We've done that. But what we are more concerned about is that you've gone beyond those parameters and are beginning to **impose your laws**, that's where we have a problem. And that has to stop. That has to definitely stop. And I encourage the Treaty 8 First Nations and all other treaty First Nations to really ensure that this house [the N.W.T. legislative assembly], that this institution lives up to those treaties that were made in 1899 and 1921. . . . **you have legislation, laws, game regulations that apply to Treaty First Nations. If you are really concerned about the Treaties, I really suggest that you lift those regulations that are imposed on treaty First Nations. Because I have every right to hunt, fish, trap and gather wherever I please without the interference of other laws.** That's a very fundamental principle that we got [recognized] when we made treaties. The foremost as a matter of fact. . . . (Francois Paulette speaking to the Constitutional Development Steering Committee, Dec. 3, 1993)



With reference to the Commissioner's Report, Paulette continued:

Treaty 8 in 1899, made by the Crown and adhesions, of 1899, June 17 it says, "We assured them that the treaty would not lead to any forced interference with their mode of life." And when I see that phrase there, when I see that comment, that to the N.W.T. Treaty 8 First Nations, it [means] our way of life, spiritually, emotionally, mentally and physically - our connection with the Earth and also with the universe. . . . the N.W.T. Treaty 8 First Nations [were] promised that they would not interfere with our mode of life. That means our governments, system of justice and so on and so on. Hunting, trapping and fishing rights. That you would not interfere with those rights. **That you will not impose laws that will infringe on those laws that's been given to us. It is very clear.** You cannot get it any clearer than that . . . . The fabric of this relationship is to recognize the special bilateral relationship we have with the Crown. **We cannot deviate from that nor this institution here, take us away from that.** (Francois Paulette speaking to the Constitutional Development Steering Committee, Dec. 3, 1993)

From the Treaty 8 Chiefs' perspective the Government of the Northwest Territories, and the federal government, have violated the nation to nation relationship between Treaty 8 nations and the Government of Canada. Because of the special bilateral nature of their agreement, Treaty 8 Chiefs particularly reject the suggestion that they are subject to laws passed by the G.N.W.T.. They are also wary of participating in further amendments to the N.W.T. Act.

Another violation of breach of Treaties is found in Section 87 of the Indian Act (1951) which provides that, subject to the terms of any treaty and any other act of the Parliament of Canada, all laws of general applicability apply to Indians. Promises that nothing would interfere with the Dene's mode of life - laws, customs, values, is contrary to "Indians will be subject to the laws of general applicability." The Indian Act contradicts the principles promised by the Treaty 8 mode of life clause. Although the government says that these conditions are "subject to the terms of treaties", their interpretation is based on written texts, rather than on the spirit and intent of Treaty 8.

Erasmus and Sanders (1992:5-6) write:

The history of the settlement of Canada shows that non-native people, represented by federal, provincial and local governments, have continued to break the original agreements. Hunting, fishing, trapping and gathering sections of treaties that were to protect the aboriginal way of life have continued to be changed by Canadian government policies, regulations, and legislation.

Fumoleau (1976:262) discusses how the Territorial Government "was geared to the promotion of transportation, mining, commerce, and the welfare of white residents." The policy of developing natural resources independently of the native people was espoused early by the Northwest Territories branch.

#### 4.6 Dene Government and the Territorial Government

Testimony given by Francois Paulette (Fort Smith), in 1976 at the Mackenzie Valley Pipeline Inquiry, discussed game laws, and changes in the Territories that effected Treaties. He specifically pointed out that the Dene have their own laws which have been violated by government:

**We as Indian people, as Dene people, as the red man, we have Dene law, we have laws that are there. They're not written on paper, and we respect the white man's law. They have their laws; we have our laws. . . . Today I see all through the Territories highways coming in. Today we're sitting here talking about Mackenzie Valley Pipeline, follow up of pipelines after pipelines. Dams to be built. . . .**

People talk of the Territories as the last frontier, the last grazing grounds for the big herds of wood buffalo, the last stand for the Dene people or for the Indian people of North America to make their biggest accomplishment in respect to their way of life, their governmental institutions and so forth. The park, the Wood Buffalo National Park, which has been set up to protect the buffalo, **today regulations are imposed, laws that are foreign again to us, people in Smith, treaty people, the Dene, can no longer go trap in the park before someone pick up their trap and tell them, "You cannot trap in here, you are illegally trapping."** (Proceedings at Community Hearings, Vol. 48, April 1976, 4747-4749)

Eighteen years later, Francois Paulette spoke about amendments to the N.W.T. Act and Dene law:

We have to determine the protocol on how we are to live with each other and how we are to live with other nations. It is for us to **design those kinds of laws that are suitable to us.** It is not designed by another institution or another government. And this Great Law we have laws, that we call to deal with justice and so on and so on. How do we police ourselves. And these pre-existing laws and principles of our governments are based on our traditional values and principles carried on from generation to generation. . . . The supreme law of the country of Canada, it belongs to

Canada, and its people, but it does not mean that the supreme law of the country applies to treaty First Nations because the B.N.A. Act was not established by consent. There are very legal formalities that we have to follow. To us these treaties were sacred. Sacred in a way that cannot deviate from that mandate that the Creator gave to us - that we protect Mother Earth, and its nature and all of the things that are on it for as Long as the Sun Shines, The River Flows and the Grass Grows. We cannot deviate from that fundamental principle. **Nor can any other government inflict or change or alter that arrangement.** So what we say is sacred. And aboriginal people have a tough time accepting that because we have a very spiritual relationship with the earth, and all of the things that are on it. And that's what guides the N.W.T. Treaty 8 First Nations.

The N.W.T. Treaty 8 Tribal Council's First Nations' submission for Constitutional Development explicitly expressed a desire to establish a Tribal Government **exclusively based on Treaty 8 First Nations principles and values.** The N.W.T. Treaty 8 Chiefs have not deviated from this position to date.

That Dene of Fort Smith should have government based on their own values and practises and consistent with the native representation of the population was expressed by George Korzweski, in 1976, as a reaction to the plans for restructuring the N.W.T. based on models that are foreign to them:

Fort Smith is a community, the southernmost community in the Northwest Territories, situated about half a mile above the Alberta border. It's made up of approximately 2,800 people. Approximately 1,600 of them are Dene and 1,200 of them are white people. This gives us approximately a 60% native majority. **The governing body that has been set up in Fort Smith to make local decisions was created not by the people of Fort Smith but by the Territorial Government, through its municipal ordinance.** It has been designed particularly for the population of Fort Smith that have moved from Southern Canada to Fort Smith. It's designed in a way that these people from Southern Canada can get into the Municipal Council and take part in it much more readily than the native population can. As we see the Municipal Council, **the political structure that is set up, it pretends to represent the community but literally does not represent the community. It's made along the lines of southern thinking.** This type of political structure would fit well into a southern community where people give the power to decide what happens to their community to eight or nine people. This is what people from the south are familiar with, so the minority of the population is familiar with this type of structure. **However, the majority of the population is not familiar with this type of structure and does not agree on the whole concept that the structure is based on.**

The native majority do not believe that eight or nine people should decide the future of the community. They believe that the future of the community should be decided by

the community, **by the long-term residents who are the native people**, and the white people who have decided that they want to make Fort Smith their home, and have an interest in the community other than monetary. . . .

They could not get the proper representation on the Municipal council because it is a foreign system. Municipal Council is not the way in which the native community of Fort Smith wish to have the future of the community decided. **It is not the political structure within which they would like to decide their own future.** The situation in Fort Smith shows why the Indian Brotherhood of the Northwest Territories and the Metis Association of the Northwest Territories have said, "No major developments before land settlement."

In Fort Smith you can see why this position has been taken. The people who are making decisions about development are not the people who should be deciding these things. The core of the community is not involved in the decision-making process there. The majority is not involved in deciding what goes on. The different projects that are proposed for around Fort Smith and that area are being looked at by eight or nine people and a decision should not be made by these people. That's why we're saying that there should be no major development before land settlement. Our rights to decide our own future through our own political institution must be recognized first so that we will be able to take an effective part in the future of the north and be able to survive as a people. (Testimony given by George Kurszweski at the Mackenzie Valley Pipeline Inquiry, Yellowknife Proceedings at Inquiry. Vol. 144, April, 1976. pp. 22009-22012).

Gerry Cheezie also discussed the need for political control that is consistent with Dene law:

I think that's why the only way [we] can ensure our survival as people is that the government understand what we mean by political control. That we need to have time to **develop own system by which we can operate under as equals. We're not asking for special status. We're just asking for what's rightfully ours**, that nobody ever bothered to discuss with us. We're undergoing a change up here and it's happening very quickly. at the Mackenzie Valley Pipeline Inquiry (Proceedings at Inquiry, Yellowknife. Vol. 144, April, 1976. p. 22021).

Gerry Cheezie reiterates that non-Dene models do not work for Dene peoples, and that the Canadian election process does not lead to fair representation for the Dene.

The biggest thing which I would like to talk about right now would be the big gap between how territorial local government sees their kind of government suitable for the people and **how we see our own government as being suitable for our needs**,



**and trying to show the gap that lies between these two things.** Just by an example of the election that we had in Fort Smith. Like I was presenting the evidence, it shows clearly that we have a large majority of native people in Fort Smith. And that large majority of people approximately 60% have hardly any or not at all, any way of deciding anything for themselves.

The local government scheme set up through the Municipal Council such that everything has to be run through their council before it is recognized. **Dene people there have no say in this government at all.** In the election that we ran last December, we tried to participate in this system. We ran candidates for the four council positions plus the mayor's position and we failed.

There's a lot of reasons why we failed. **The biggest one of all is the people don't understand this kind of system. . . .**

I don't see any hope for those people. There is no way that you can tell an old trapper, an old man, **that he doesn't have a system of his own which he can't voice his concerns** because he can't write up a piece of paper like this and consequently give it in his native language to the mayor or the council and try to bring across his point of view of his concerns.

There is no way that can happen. **I think the only way that the people can survive here is that if they be given the time to develop their own kind of systems which they can operate under which would give respect to their kind of culture they have, lifestyle and the environment and the land that the Dene people are trying to recover from the government.** (at the Mackenzie Valley Pipeline Inquiry Proceedings at Inquiry, Yellowknife. Vol. 144, April, 1976. pp. 22016-22018).

The Commission for Constitutional Development (the Bourque Commission) attempted to solve some of the grievances addressed above, and to write principles that would incorporate Dene values and laws into the amendments to the N.W.T. Act. They write:

**The First Peoples have the inherent right to self-government. Upon the arrival of Europeans in Canada, First Peoples entered into nation to nation relationships with the newcomers. That the relationship was seen in this manner by the British Crown as well as the First Peoples is shown in the language of the Royal Proclamation of 1763 and of numbered treaties, including 8 and 11.** (Bourque 1992:19)

The Commission recommended the following in respect to First Nations:

- 1) **The New Western Territory constitution should uphold and protect the First Peoples' inherent right to self-government.**



- 2) The New Western Territory constitution should recognize First Peoples' languages as official languages that will be used in public, central, district and aboriginal government institutions.
- 3) The New Western Territory constitution should recognize that Aboriginal First Nations may opt out of the New Western Territory constitutional process and seek a direct link with the federal government. (Bourque 1992:19).
- 4) The Commission recommends that any new provisions respecting aboriginal and treaty rights in the Western Territory constitution be consistent with the agreements and treaties now protected by s. 35 of the Canadian Constitution. (Bourque 1992:20)

The Bourque Commission writes of the rights of Treaty First Nations:

A New Western Territory Constitution should also include commitments to Treaty First Nations. Through Treaties 8 (1899) and 11 (1921), the government of Canada recognized the right of Treaty First Nations to their accustomed hunting, fishing and gathering modes of life, their prior use and occupancy of the land, **and their status as sovereign self-determining treaty First Nations with their own governments (chiefs, headmen, and councillors)**. Treaty First Nations want their treaty and aboriginal rights upheld to restore good feelings and balance with non-aboriginal. (Bourque 1992:20)

The Commission recommended that **"the spirit, and the meaning and intent of treaties 8 and 11 be recognized, upheld and protected."**

In considering the spirit and meaning and intent of the treaties, the Commission recommends that the constitution state:

- the treaties deal with education, housing, health, economic development and state that taxes would not be imposed;
- the treaties guarantee their adherents rights to hunt, fish and trap as they always have, on their ancestral lands, without interference;
- the treaties, according to Dene oral history, were not land surrenders, but agreements to share the land, air and water, with the consent of treaty First Nations;
- the treaties established band councils as treaty First Nations governments, and these governments are recognized as such;
- Treaty First Nations have the right to establish a justice system and a code of ethics that embodies their traditions, cultures, values, customs laws and institutions; and
- Treaty First Nations will determine their own membership, that may include non-Dene. (Bourque 1993:21)

Other than the general concern that entering negotiations with the Territorial Government would diminish the relationship between Treaty 8 First Nations and the Crown there are other specific concerns put forward by the Chiefs:

1. The Commission did not detail, in a comprehensive way, the Spirit and Intent of Treaty 8, it did not deal with whether or not Treaty nations would be sovereign;
2. It did not detail what governmental powers treaty first nations have (the report presents a watered-down version of the concepts of nation to nation relations)
3. It does not mention any other possibilities for First Nations governments larger than Bands with powers greater than present day bands.

**Is the Commission promoting the development of First Nations' government on the local municipal model?**

The Commission also did not mention structural problems inherent in a constitution -- it is not in the Government of the Northwest Territories' interest to recognize and entrench the Nation-status of indigenous peoples.

Harsher criticisms were levelled at the Territorial administration in 1976, these criticisms may have application to recent events in constitutional development:

**Analysis of the Territorial Administration.** An analysis of the Territorial Administration's policy on the development of local government is, on reflection, really quite simple. As stated earlier, the **Territorial Administration had direct interest in the appearance of a grass-roots political development. However, whenever the process threatened to become more than appearance, immediate attempts were made to limit and control the process.** Rather than welcoming this as the success of the Local Government Program, the Territorial Administration has attempted to diffuse and limit that development by channelling it into administrative complexities and bureaucratic lethargy.

In my opinion, it is this continued response of attempting to control, diffuse and undermine the political self-determination of the native people within the Territories which most clearly show the continuing colonial nature of the Territorial Administration in the north.

**The Territorial Administration has an interest in maintaining and enhancing its control over the Dene and their land. It seeks to impose a system of institutions and decisions foreign to the Dene, a system serving non-Dene interests. Not only does this system not serve Dene interests but indeed it divides the people and undermines their ability to maintain their own cultural patterns.**

In my opinion, therefore, the Territorial Administration does not represent the interests of the Dene. **The growth of the Territorial Administration in no way represents the decolonization of the Dene.**

(Testimony given by Wilf Bean at the Mackenzie Valley Pipeline Inquiry Proceedings at Inquiry, Yellowknife. Vol. 144, April, 1976, pp. 22051-22052).

Wilf Bean had stated earlier:

It is now my opinion that despite official declaration to the contrary and despite the individual beliefs of various local government officers, **the Territorial Administration as a whole has had no serious intent of allowing either communities or native peoples any significant degree of autonomy** or any real chance to run their own affairs. One may well ask why the Territorial Administration bothered with the Local Government Program at all if it did not intend to allow people greater political autonomy. Why did it put so much effort in establishing local councils. **The answer is quite simple. It was very much in the interests of the Territorial Administration to undertake such a program to maintain and enhance its own position.** More specifically, the major interests of the Territorial Administration were served in the following ways.

The Territorial Administration **wished to get a greater degree of administrative control from Ottawa.** Ottawa set a condition to such a transfer, the condition being that the Territorial Administration had to develop a greater appearance of being a legitimate, democratic government in the north. . . . there was one important limitation on this municipal infrastructure however, if the Territorial Administration wished to gain control from Ottawa. Chiefs and Band Councils through the treaties, and the Indian Act were a direct federal responsibility. To acknowledge the Chiefs and Band Councils, as a legitimate form of local government would therefore defeat the Territorial Administration's purpose.

Thus, the Territorial Administration could argue for a greater control over northern administration if it could develop a municipal infrastructure controlled through Territorial Ordinances; that is, one which excluded Chiefs and Band Councils. **The Territorial Administration therefore adopted an ideology which didn't acknowledge race or cultural difference -- "We're all northerners."** (Testimony given by Wilf Bean at the Mackenzie Valley Pipeline Inquiry, Proceedings at Inquiry, Yellowknife. Vol. 144, April, 1976, pp. 22044-22045)

#### 4.7 Treaty Rights and The White Paper of 1969

The resentment of being grouped as "Northerners" was expressed in the T8TC interim report to the Constitutional Development Steering Committee.

The NWT legislative assembly now want to amend the NWT Act and are asking First Nations to participate in the process. The Chiefs are now discussing whether they want to have input into the amending process. Many feel that the entire process is **designed to undermine the Treaty 8 Tribal Council's position**. Again, the process ignores the special bilateral relationship that Treaty 8 First Nations have with the Government of Canada. To ignore this bilateral relation reduces **the Dene to the status of Northerners in a public government**. To the N.W.T. Treaty 8 First Nations this policy appears to be the method whereby the Treaty 8 First Nations are assimilated, as planned in the White Paper of 1969. (Paulette and Aasen 1993:17)

These concerns were also presented in a speech to the Constitutional Development Steering Committee:

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What you asked the N.W.T. Treaty 8 Chiefs is to participate to amend this Act. And this Act, this government, is based on public government. **And this public government has given N.W.T. chiefs [residents status] and we saw this for a long time. We established homogeneous groups of people called Northerners** and the N.W.T. First Nations have some very fundamental basic disagreements with that choice of words. In effect, the N.W.T. Act, as the N.W.T. Treaty First Nations see it is based on the blueprint of the White Paper that was made in 1969. That is very clear. We know that the Treaty First Nations, themselves, have really gone a long way in maintaining their status as nations in Canada today, but this White Paper is still with us today, here in the Northwest Territories. So, for those reasons, the N.W.T. Treaty 8 First Nations have some very fundamental disagreements of how this amendment should proceed because if we involve ourselves with this Committee without asking for the changes I asked for yesterday and amendments - getting



involved with this arrangement - I feel that the N.W.T. Treaty 8 First Nations will dismiss the bilateral relationship we have with the Crown. [That is] we will dismiss the nation to nation that we have with the Government of Canada. (Francois Paulette, addressing the Constitutional Development Steering Committee Dec. 2-3, 1993)

Richard Price (1991:78) discusses the connection between treaties, the White Paper, and the status of Indian nations:

Unresolved treaty issues came to the public's attention most dramatically in 1969. That year the new government of Prime Minister Pierre Elliot Trudeau introduced its *White Paper on Indian Policy*. It contained a number of statements relating to Indian Treaty rights:

**The terms and effects of the treaties between Indian people and the government have been widely misunderstood. A plain reading of the words used in the treaties reveals the limited and minimal promises that were included in them . . . The government and the Indian people must reach a common understanding of the future role of the treaties . . . Finally, once Indian lands are firmly within Indian control . . . treaties between groups within a society and the government of that society will require that these treaties be reviewed to see how they might be equitably ended.**

In detailing Trudeau's policy, Price argues that the liberal government viewed treaties as "international agreements between nation states and that the federal government should not have treaties within Canadian society."

The Trudeau administration did not believe in aboriginal rights for natives nor did they believe in special status or treaty rights in Canada. In wanting to **unilaterally** end "discrimination" by making Indians like other Canadians; by proposing that all services should come from the same branches of government for all Canadians (Price 1991:80), by wanting to terminate treaty relations, the government wanted to end what it perceived as special status. It wanted to make all Canadians equal (Price 1991:78).

When the Treaty 8 Tribal Council Chiefs say that they do not want wish to be considered as Northerners participating in public government, they are rejecting the principles of the White Paper of 1969. They are also stating that they do not believe that the Territorial government recognizes Treaty 8 rights.



#### 4.8 Treaty Rights and the Canadian Constitution of 1982

The N.W.T. Treaty 8 Chiefs feel strongly that in amending an N.W.T. Act or when developing the New Western Territory Constitution, that consent has to be given by N.W.T. Treaty 8 First Nations. The Commission for Constitutional Development Recommendation No. 10 (p.40) referring to the current constitution of the N.W.T. writes:

The Northwest Territories Act is a federal statute. This means that the Parliament of Canada is legally able to change the way residents of the Northwest Territories are governed without their consent, **provided the change does not affect Aboriginal First Nations' rights under s.35 of the Canadian Constitution.**

Erasmus and Sanders write of the contradiction of having aboriginal and treaty rights entrenched in the Constitution:

... First Nations were not even party to the drafting of the renewed Constitution of 1982. The governments did agree, however, that First Nations leaders should be invited to participate in subsequent constitutional conferences to identify and define their rights for inclusion in the Canadian Constitution.

That was the first time in their relationship with the Crown that First Nations were consulted about the Constitution, albeit only to a very limited degree. They were, in effect, merely invited to establish and defend their rights. (Erasmus and Sanders, 1992:10)

Sections of the Canadian Constitution Act which affect native people include:

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including:
  - (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
  - (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.
35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit, and Metis people of Canada.

(3) For greater certainty, in Subsection (1) "treaty rights" includes rights that now exist by way of land claims agreement or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in Subsection (1) are guaranteed equally to male and female persons.

35.1 The Government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of Section 91 of the Constitution Act, 1987 [sic], to Section 25 of this Act or to this Part.

(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Ministers of the provinces, will be convened by the Prime Minister of Canada; and

(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.

Francois Paulette had this to say about Section 35 of the Canadian Constitution of 1982 cited above:

The Treaty 8 Chiefs in the Territories, are seeking to have, treaties, agreements fully recognized . . . as far as we are concerned treaties with the Crown, a Constitutional agreement has been made and this, this has to be paramount over subsequent legislation. So, that is something that we have to talk about, very clearly. . . . And in light of all these discussions, I will talk about the historical and legal realities substantiated **since 1982 by Section 35** of the Constitution. The present concepts of Crown Lands, Commissioners Lands in the Northwest Territories, as well as the N.W.T. Act and the Indian Act, and the comprehensive claims policies, are considered to be unconstitutional by treaties. In that, they contravene an original negotiated relationship between Treaty First Nations and the Crown.

. . . the Canadian Constitution of 1982, Section 35, that talks about the existing treaty and aboriginal rights. . . .

And the N.W.T. Act when you arrive at a constitution, and you amend the Constitution, the N.W.T. Act, is that this N.W.T. Act will require legislation and we are very sceptical of the arrangements that the N.W.T. Treaty 8 chiefs are going to have in that amendment, or that constitution. . . . So when we talk about the Indians' Rights Charter - that will also apply to Treaty First Nations. And the Charlotte Accord

was to give us that. Was to provide that to treaty First Nations. And as you know the N.W.T. Treaty 8 First Nations had some very fundamental objections to the Charlotte Accord because of that fundamental relationship that we have with the Crown, in treaties. Because you don't have to have legislation to implement treaties. You do not need a constitution to implement treaties - it is already there.

Page 20 of the Bourque Commission, there is a recommendation there and its the only recommendation on that page. I'll just read it: "The Commission recommends that any provisions respecting aboriginal and treaty rights in the Western Territory Constitution, be consistent with agreements and treaties now protected by Section 35 of the Constitution."

As Francois Paulette stated:

The Supreme Law of Canada, the Constitution of 1982, does not reflect or detail the Spirit and Intent of the Treaty. It merely entrenches existing aboriginal and treaty rights. Nor does the N.W.T. Act reflect on the Spirit and Intent of Treaty 8. Canada and its administration must set up a mechanism within their law which respects and honours the spirit and intent of Treaty 8 as it is defined by the Chiefs and Elders. This position finds support in recent Supreme Court of Canada decisions, which say that treaties should be interpreted as the First Nations people would have understood them within the cultural and historical context of the times, with the terms of the treaties being construed liberally, and with any ambiguities resolved in favour of the First Nations (Treaty 8 Tribal Association 1993).

Treaty 8 First Nations peoples have upheld their end of the Treaty 8 agreement. They have allowed settlement and have kept the peace. A mechanism must be put in place for the Government of Canada to ensure that a true and lasting bilateral accord is fulfilled by both signatories to Treaty 8. Canada has a trust to see that Treaty 8 is upheld.

#### 4.9 Summary

This section was intended to clarify and reference works in support of the Treaty 8 Tribal Council's position on constitutional issues. In this section, the Royal Proclamation, the principles of consent and treaties under international law were reviewed. The Treaty 8 Tribal Council Chiefs believe that these documents and principles support the position that consent is required prior to making changes that affect indigenous people and their rights. The chiefs maintain that the spirit of Treaty 8 reconfirms the principles of consent. The principle that

treaties fall under international law found support in the literature reviewed.

This section also describes why Treaty 8 Tribal Council Chiefs have problems with the concept of negotiating amendments to the N.W.T. Act with the Constitutional Development Steering Committee. It also clarifies why Treaty 8 Tribal Council First Nations believe that being treated as Northerners undermines their rights.

## 5.0 SUMMARY OF THE REPORT

There are two versions of Treaty 8 - the government version and the Dene version. It is clear that these interpretations differ radically from one another. However, the Government version of the Treaty as reported by the Treaty Commissioners supports the Dene version of the promises made at the negotiations of Treaty 8. The Dene version of what happened is supported by many other witnesses, and is particularly clearly stated in the sworn affidavit signed by Breynat. Despite claims to the contrary, Dene Elders maintain that they did not surrender their lands to the government. This position was given credence by Justice Morrow in the Paulette case. That the Dene understood Treaty 8 to be a Treaty of Peace and Friendship cannot be doubted. Elder testimony confirm this, and the peace and friendship aspects of Treaty 8 are stressed in the treaty document. It appears that, at the treaty's negotiation, Dene leaders had a good understanding of what was happening and reacted accordingly. They had conditions which were verbally stated and verbally accepted. It was only after these conditions were met that they took treaty money.

The Dene understood that annuity payments symbolized their on-going relationship with the Crown. Accepting treaty was a statement for the Dene as was refusing it. Treaty days were ceremonially important and friends and family travelled to them. Treaty days also were the time that Dene leaders sat down with government leaders and discussed important issues.

The refusal to be brought under the jurisdiction of others is indicated throughout Elder testimony. Especially important was the guarantee that the Dene would not be subject to taxation and military service, and that nothing would be done to change their mode of life.

The particular rights in the Treaty (relating to education, social and economic welfare, etc.) were viewed as on-going ones, which would evolve by mutual agreement as



circumstances changed. While the Commissioners made certain assurances in their verbal promises, the Dene understood these promises not in a narrow sense, but in a broad and all encompassing way - as nation to nation agreements - where the Dene would control their lives, their own economies, their own political institutions and their own lands. From a Dene perspective, Treaty 8 recognized and protected rather than abrogated their autonomy, their way of life, their economic institutions, and their land rights. The Dene believed, and still believe, that their relationship with the Crown is an on-going one based on a nation to nation relationship. When laws were anticipated that might have an impact on Indian nations, Indians would be consulted, as in treaty making, and their consent would be required before changes could be made. As in the case of hunting, fishing and trapping laws, laws would be passed to protect Indian interests and Indian rights. That these principles have been violated, and that treaty rights have not been implemented, has resulted in deep-seated grievances.

There is support in the principles of international law, for the Dene's claim that Treaties are international agreements that can not be unilaterally interpreted or altered without their consent. This report has also shown how the federal government has violated these principles by legislation such as the Indian Act, by proposed policies such as the White Paper, and by transferring power unilaterally to the Territorial government. Consistent with their beliefs, the Treaty 8 Chiefs, acting as nations, have insisted that consent is needed prior to altering the N.W.T. Act. The T8TC Chiefs want First Nations government be based on Dene values, customs, principles and laws. Although using information from the Mackenzie Valley Pipeline Inquiry (1976), this report has shown examples of why people, generally, are hesitant to participate in restructuring territorial government.

**The N.W.T. Treaty 8 First Nations believe in the GREAT LAW -**

"As Long as the Sun Shines, the Rivers Flow, and the Grass Grows." The Great Law of the N.W.T. Treaty 8 First Nations was given by the Creator Himself, at the beginning of time and only He can alter or change the Great Law. All man made laws are manifested and flow from this Great Law. This belief and acceptance is what guides the N.W.T. Treaty 8 First Nations.

N.W.T. Treaty 8 First Nations entered into the treaty in 1899 based on this GREAT LAW - "As Long as the Sun Shines, the Rivers Flow and the Grass Grows." Treaty 8 acknowledges, the laws laid down by the Creator - that the Dene peoples have rights that last forever. In signing Treaty 8, the Dene believe that the commissioners and



government understood and recognized this Great Law. The Dene by signing Treaty 8 were acting in a way that was consistent with their convictions. (Paulette and Aasen 1993:10)

Oral historical evidence indicates that Dene Elders never would have agreed to the terms of Treaty 8 unless it recognized this great law.

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## **7.0 APPENDICES**

**APPENDIX 1: STATEMENT OF DENE NATION**



# STATEMENT OF DENE NATION

January 26, 1994  
Hay River Dene Reserve

WHEREAS the interests of Treaty 11 First Nations in the Deh Cho and the NWT Treaty 8 First Nations are solely represented by their Chiefs and Councils; and

WHEREAS the GNWT has established a Constitutional Development Steering Committee (CDSC) for the creation of a new Western Territory; and

WHEREAS the CDSC process is detrimental to the interests of the Treaty First Nations;

NOW THEREFORE BE IT RESOLVED THAT:

- (i) An independent Treaty First Nation Committee be established consisting of Treaty First Nations who have not entered into the comprehensive claims process; and
- (ii) The said Treaty First Nation Committee promote and maintain the spirit and intent of aboriginal and treaty sovereignty and facilitate the constitutional development of Denendeh; and
- (iii) The said Treaty First Nation Committee will work toward the decolonization of their lands and membership; and
- (iv) The said Treaty First Nation Committee will serve to educate and lobby for the attainment of the above noted resolutions; and
- (v) The financial resources for the attainment of the above noted resolutions shall be accessed by the Treaty First Nation Committee.

Chief Epat

Chief - Tivikanie

Francis Betooka

Chief Dennis Dene

Chief Herb Bruljan

Chief Yvonne Roussion

Chief Hap Chest

Chief Bruce Landry

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- (iii) The said Treaty First Nation Committee will work toward the decolonization of their lands and membership; and
- (iv) The said Treaty First Nation Committee will serve to educate and lobby for the attainment of the above noted resolutions; and
- (v) The financial resources for the attainment of the above noted resolutions shall be accessed by the Treaty First Nation Committee.

Chief Michael Paul

Benadette Under

Chief

Intine Mabel

James Sangin

Dr B C

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**APPENDIX 2: TEXT OF THE REPORT OF COMMISSIONERS FOR TREATY NO. 8 (1899); ARTICLES OF TREATY NO. 8 (1899)**

[The following are excerpts from *Treaty No. 8 Made June 21, 1899 and Adhesions, Reports, Etc.*, Land Publication No. QS-0576-000-FE-A-16]

**REPORT OF  
COMMISSIONERS FOR TREATY NO. 8  
Winnipeg, Manitoba, 22nd September, 1899.**

*[Preamble at page 121... "Sir,--We have the honour to transmit herewith the treaty..."]*

We met the Indians on the 20th, and on the 21st the treaty was signed.

As the discussions at the different points followed on much the same lines, we shall confine ourselves to a general statement of their import. There was a marked absence of the old Indian style of oratory. Only among the Wood Crees were any formal speeches made, and these were brief. The Beaver Indians are taciturn. The Chipewyans confined themselves to asking questions and making brief arguments. They appeared to be more adept at cross-examination than at speech-making, and the Chief at Fort Chipewyan displayed considerable keenness of intellect and much practical sense in pressing the claims of his band. They all wanted as liberal, if not more liberal terms, than were granted to the Indians of the plains. Some expected to be fed by the Government after the making of treaty, and all asked for assistance in seasons of distress and urged that the old and indigent who were no longer able to hunt and trap and were consequently often in distress should be cared for by the Government. They requested that medicines be furnished. At Vermilion, Chipewyan and Smith's Landing, an earnest appeal was made for the services of a medical man. There was expressed at every point the fear that the making of the treaty would be followed by the curtailment of the hunting and fishing privileges, and many were impressed with the notion that the treaty would lead to taxation and enforced military service. They seemed desirous of securing educational advantages for their children, but stipulated that in the matter of schools there should be no interference with their religious beliefs.

We pointed out that the Government could not undertake to maintain Indians in idleness; that the same means of earning a livelihood would continue after the treaty as existed before it, and that the Indians would be expected to make use of them. We told them that the Government was always ready to give relief in cases of actual destitution, and that in seasons of distress they would without any special stipulation in the treaty receive such assistance as it was usual to give in order to prevent starvation among Indians in any part of Canada; and we stated that the attention of the Government would be called to the need of some special provision being made for assisting the old and indigent who were unable to work and dependent on charity for the means of sustaining life. We promised that supplies of

medicines would be put in the charge of persons selected by the Government at different points, and would be distributed free to those of the Indians who might require them. We explained that it would be practically impossible for the Government to arrange for regular medical attendance upon Indians so widely scattered over such an extensive territory. We assured them, however, that the Government would always be ready to avail itself of any opportunity of affording medical service just as it provided that the physician attached to the Commission should give free attendance to all Indians whom he might find in need of treatment as he passed through the country.

Our chief difficulty was the apprehension that the hunting and fishing privileges were to be curtailed. The provision in the treaty under which ammunition and twine is to be furnished went far in the direction of quieting the fears of the Indians, for they admitted that it would be unreasonable to furnish the means of hunting and fishing if laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood by such pursuits. But over and above the provision, we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it.

We assured them that the treaty would not lead to any forced interference with their mode of life, that it did not open the way to the imposition of any tax, and that there was no fear of enforced military service. We showed them that, whether treaty was made or not, they were subject to the law, bound to obey it, and liable to punishment for any infringements of it. We pointed out that the law was designed for the protection of all, and must be respected by all the inhabitants of the country, irrespective of colour or origin; and that, in requiring them to live at peace with white men who came into the country, and not to molest them in person or in property, it only required them to do what white men were required to do as to the Indians.

As to education, the Indians were assured that there was no need of any special stipulation, as it was the policy of the Government to provide in every part of the country, as far as circumstances would permit, for the education of Indian children, and that the law, which was as strong as a treaty, provided for non-interference with the religion of the Indians in schools maintained or assisted by the Government.

We should add that the chief of the Chipewyans of Fort Chipewyan asked that the Government should undertake to have a railway built into the country, as the cost of goods which the Indians require would be thereby cheapened and the prosperity of the country enhanced. He was told that the Commissioners had no authority to make any statement in the matter further than to say that his desire would be made known to the Government.

When we conferred, after the first meeting with the Indians at Lesser Slave Lake, we came to the conclusion that it would be best to make one treaty covering the whole of the



territory ceded, and to take adhesions thereto from the Indians to be met at the other points rather than to make several separate treaties. The treaty was therefore so drawn as to provide three ways in which assistance is to be given to the Indians, in order to accord with the conditions of the country and to meet the requirements of the Indians in the different parts of the territory.

In addition to the annuity, which we found it necessary to fix at the figures of Treaty Six, which covers adjacent territory, the treaty stipulates that assistance in the form of seed and implements and cattle will be given to those of the Indians who may take to farming, in the way of cattle and mowers to those who may devote themselves to cattle-raising, and that ammunition and twine will be given to those who continue to fish and hunt. The assistance in farming and ranching is only to be given when the Indians actually take to these pursuits, and it is not likely that for many years there will be a call for any considerable expenditure under these heads. The only Indians of the territory ceded who are likely to take to cattle-raising are those about Lesser Slave Lake and along the Peace River, where there is quite an extent of ranching country; and although there are stretches of cultivable land in those parts of the country, it is not probable that the Indians will, while present conditions obtain, engage in farming further than the raising of roots in a small way, as is now done to some extent. In the main the demand will be for ammunition and twine, as the great majority of the Indians will continue to hunt and fish for a livelihood. It does not appear likely that the conditions of the country on either side of the Athabasca and Slave Rivers or about Athabasca Lake will be so changed as to affect hunting or trapping, and it is safe to say that so long as the fur-bearing animals remain, the great bulk of the Indians will continue to hunt and to trap.

The Indians are given the option of taking reserves or land in severalty. As the extent of the country treated for made it impossible to define reserves or holdings, and as the Indians were not prepared to make selections, we confined ourselves to an undertaking to have reserves and holdings set apart in the future, and the Indians were satisfied with the promise that this would be done when required. There is no immediate necessity for the general laying out of reserves or the allotting of land. It will be quite time enough to do this as advancing settlement makes necessary the surveying of the land. Indeed, the Indians were generally averse to being placed on reserves. It would have been impossible to have made a treaty if we had not assured them that there was no intention of confining them to reserves. We had to very clearly explain to them that the provision for reserves and allotments of land were made for their protection, and to secure to them in perpetuity a fair portion of the land ceded, in the event of settlement advancing.

After making the treaty at Lesser Slave Lake it was decided that, in order to offset the delay already referred to, it would be necessary for the Commission to divide. Mr. Ross and Mr. McKenna accordingly set out for Fort St. John on the 22nd of June. The date appointed for meeting the Indians there was the 21st. When the decision to divide was come to, a special messenger was despatched to the Fort with a message to the Indians explaining the delay, advising them that Commissioners were travelling to meet them, and requesting them to wait at the Fort. Unfortunately the Indians had dispersed and gone to their hunting



grounds before the messenger arrived and weeks before the date originally fixed for the meeting, and when the Commissioners get within some miles of St. John the messenger met them with a letter from the Hudson's Bay Company's officer there advising them that the Indians after consuming all their provisions set off on the 1st June in four different bands and in as many different directions for the regular hunt; that there was not a man at St. John who knew the country and could carry word of the Commissioners' coming, and even if there were it would take three weeks or a month to get the Indians in. Of course there was nothing to do but return. It may be stated, however, that what happened was not altogether unforeseen. We had grave doubts of being able to get to St. John in time to meet the Indians, but as they were reported to be rather disturbed and ill-disposed on account of the actions of miners passing through their country, it was thought that it would be well to show them that the Commissioners were prepared to go into their country, and that they had put forth every possible effort to keep the engagements made by the Government.

The Commissioners on their return from St. John met the Beaver Indians of Dunvegan on the 21st day of June and secured their adhesion to the treaty. They then proceeded to Fort Chipewyan and to Smith's Landing on the Slave River and secured the adhesion of the Cree and Chipewyan Indians at these points on the 13th and 17th days of July respectively.

In the meantime Mr. Laird met the Cree and Beaver Indians at peace River Landing and Vermilion, and secured their adhesion on the 1st and 8th days of July respectively. He then proceeded to Fond du Lac on Lake Athabasca, and obtained the adhesion of the Chipewyan Indians there on the 25th and 27th days of July.

After treating with the Indians at Smith, Mr. Ross and Mr. McKenna found it necessary to separate in order to make sure of meeting the Indians at Wabiscow on the date fixed. Mr. McKenna accordingly went to Fort McMurray, where he secured the adhesion of the Chipewyan and Cree Indians on the 4th day of August, and Mr. Ross proceeded to Wabiscow, where he obtained the adhesion of the Cree Indians on the 14th day of August.

The Indians with whom we treated differ in many respects from the Indians of the organized territories. They indulge in neither paint nor feathers, and never clothe themselves in blankets. Their dress is of the ordinary style and many of them were well clothed. In the summer they live in tepees, but many of them have log houses in which they live in winter. The Cree language is the chief language of trade and some of the Beavers and Chipewyans speak it in addition to their own tongues. All the Indians we met were with rare exceptions professing Christians, and showed evidences of the work which missionaries have carried on among them for many years. A few of them have had their children avail themselves of the advantages afforded by boarding schools established at different missions. None of the tribes appear to have any very definite organization. They are held together mainly by the language bond. The chiefs and headmen are simply the most efficient hunters and trappers. They are not law-makers and leaders in the sense that the chiefs and headmen of the plains and of old Canada were. The tribes have no very distinctive characteristics, and as far as we could learn no traditions of any import. The Wood Crees are an off-shoot of the Crees of the South.

The Beaver Indians bear some resemblance of the Indians west of the mountains. The Chipewyans are physically the superior tribe. The Beavers have apparently suffered most from scrofula and phthisis, and there are marks of these diseases more or less among all the tribes.

Although in manners and dress the Indians of the North are much further advanced in civilization than other Indians were when treaties were made with them, they stand as much in need of the protection afforded by the law to aborigines as do any other Indians of the country, and are as fit subjects for the paternal care of the Government.

It may be pointed out that hunting in the North differs from hunting as it was on the plains in that the Indians hunt in a wooded country and instead of moving in bands go individually or in family groups.

Our journey from point to point was so hurried that we are not in a position to give any description of the country ceded which would be of value. But we may say that about Lesser Slave Lake there are stretches of country which appear well suited for ranching and mixed farming; that on both sides of the Peace River there are extensive prairies and some well wooded country; that at Vermilion, on the Peace, two settlers have successfully carried on mixed farming on a pretty extensive scale for several years, and that the appearance of the cultivated fields of the Mission there in July showed that cereals and roots were as well advanced as in any portion of the organized territories. The country along the Athabasca River is well wooded and there are miles of tar-saturated banks. But as far as our restricted view of the Lake Athabasca and Slave River country enabled us to judge, its wealth, apart from possible mineral development, consists exclusively in its fisheries and furs.

In going from Peace River Crossing to St. John, the trail which is being constructed under the supervision of the Territorial Government from moneys provided by Parliament was passed over. It was found to be well located. The grading and bridge work is of a permanent character, and the road is sure to be an important factor in the development of the country.

We desire to express our high appreciation of the valuable and most willing service rendered by Inspector Snyder and the corps of police under him, and at the same time to testify to the efficient manner in which the members of our staff performed their several duties. The presence of a medical man was much appreciated by the Indians, and Dr. West, the physician to the Commission, was most assiduous in attending to the great number of Indians who sought his services. We would add that the Very Reverend Lacombe, who was attached to the Commission, zealously assisted us in treating with the Crees.

["Articles" at page 127]

Winnipeg, Man., September 22, 1899.

#### TREATY NO. 8

ARTICLES OF A TREATY made and concluded at the several dates mentioned therein, in the year of Our Lord one thousand eight hundred and ninety-nine, between Her most Gracious Majesty the Queen of Great Britain and Ireland, by Her Commissioners the Honourable David Laird, of Winnipeg, Manitoba, Indian Commissioner of the said Province and the Northwest Territories; James Andrew Joseph McKenna, of Ottawa, Ontario, Esquire, and the Honourable James Hamilton Ross, of Regina, in the Northwest Territories, of the one part; and the Cree, Beaver, Chipewyan and other Indians, inhabitants of the territory within the limits hereinafter defined and described, by their Chiefs and Headmen, hereunto subscribed, of the other part:-

WHEREAS, the Indians inhabiting the territory hereinafter defined have, pursuant to notice given by the Honourable Superintendent General of Indian Affairs in the year 1898, been convened to meet a Commission representing Her Majesty's Government of the Dominion of Canada at certain places in the said territory in the present year 1899, to deliberate upon certain matters of interest to Her Most Gracious Majesty, of the one part, and the said Indians of the other.

AND WHEREAS, the said Indians have been notified and informed by Her Majesty's said Commission that it is Her desire to open for settlement, immigration, trade, travel, mining, lumbering, and such purposes as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract, and to make a treaty, and arrange with them, so that there may be peace and good will between them and Her Majesty's other subjects, and that Her Indian people may know and be assured of what allowances they are to count upon and receive from Her Majesty's bounty and benevolence.

AND WHEREAS, the Indians of the said tract, duly convened in council at the respective points named hereunder, and being requested by her Majesty's Commissioners to name certain Chiefs and Headmen who should be authorized on their behalf to conduct such negotiations and sign any treaty to be founded thereon, and to become responsible to her Majesty for the faithful performance by their respective bands of such obligation as shall be assumed by them, the said Indians have therefore acknowledged for that purpose the several Chiefs and headmen who have subscribed hereto.

AND WHEREAS, the said Commissioners have proceeded to negotiate a treaty with the Cree, Beaver, Chipewyan and other Indians, inhabiting the district hereinafter defined and described, and the same has been agreed upon and concluded by the respective bands at the dates mentioned hereunder, the said Indians DO HEREBY CEDE, RELEASE, SURRENDER AND YIELD UP to the Government of the Dominion of Canada, for Her Majesty the Queen

and Her successors for ever, all their rights, titles and privileges whatsoever, the lands included within the following limits, that is to say:-

Commencing at the source of the main branch of the Red Deer River in Alberta, thence due west to the central range of the Rocky Mountains, thence northwesterly along the said range to the point where it intersects the 60th parallel of north latitude, thence east along said parallel to the point where it intersects Hay River, thence northeasterly down said river to the south shore of Great Slave Lake, thence along the said shore northwesterly (and including such rights to the islands in said lakes as the Indians mentioned in the treaty may possess), and thence easterly and northeasterly along the south shores of Christie's Bay and McLeod's Bay to old Fort Reliance near the mouth of Lockhart's River, thence southeasterly in a straight line to and including Black Lake, thence southwesterly up the stream from Cree Lake, thence including said lake southwesterly along the height of land between the Athabasca and Churchill Rivers to where it intersects the northern boundary of Treaty Six, and along the said boundary easterly, northerly and southwesterly, to the place of commencement.

AND, ALSO the said Indian rights, titles and privileges whatsoever to all other lands wherever situated in the Northwest Territories, British Columbia, or in any other portion of the Dominion of Canada.

TO HAVE AND TO HOLD the same to Her Majesty the Queen and Her successors for ever.

And Her Majesty the Queen HEREBY AGREES with the said Indians that they shall have right to pursue their usual vocation of hunting, trapping and fishing through the tract surrounded as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands as desire reserves, the same not to exceed in all one square mile for each family of five for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families; and for such families or individual Indians as may prefer to live apart from band reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each Indian, the land to be conveyed with a proviso as to non-alienation without the consent of the Governor General in Council of Canada, the selection of such reserves, and lands in severalty, to be made in the manner following, namely, the Superintendent General of Indian Affairs shall depute and send a suitable person to determine and set apart such reserves and lands, after consulting with the Indians concerned as to the locality which may be found suitable and open for selection.

Provided, however, that Her Majesty reserves the right to deal with any settlers within



the bounds of any lands reserved for any band as She may see fit; and also that the aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.

It is further agreed between Her Majesty and Her said Indian subjects that such portions of the reserves and lands above indicated as may at any time be required for public works, buildings, railways, or roads of whatsoever nature may be appropriated for that purpose by Her Majesty's Government of the Dominion of Canada, due compensation being made to the Indians for the value of any improvements thereon, and an equivalent in land, money or other consideration for the area of the reserve so appropriated.

And with a view to show the satisfaction of Her Majesty with the behaviours and good conduct of Her Indians, and in extinguishment of all their past claims, She hereby, through Her Commissioners, agrees to make each Chief a present of thirty-two dollars in cash, to each Headman twenty-one dollars, and to every other Indian of whatever age, of the families represented at the time and place of payment, twelve dollars.

Her Majesty also agrees that next year, and annually afterwards for ever, She will cause to be paid to the said Indians in cash, at suitable places and dates, of which the said Indians shall be duly notified, to each Chief twenty-five dollars, each Headman, not exceed four to a large Band and two to a small Band, fifteen dollars, and to every other Indian, of whatever age, five dollars, the same, unless there be some exceptional reason, to be paid only to heads of families for those belonging thereto.

FURTHER, Her Majesty agrees that each Chief, after signing the treaty, shall receive a silver medal and a suitable flag, and next year, and every third year thereafter, each Chief and Headman shall receive a suitable suit of clothing.

FURTHER, Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as to Her Majesty's Government of Canada may seem advisable.

FURTHER, Her Majesty agrees to supply each Chief of a Band that selects a reserve, for the use of that Band, ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones.

FURTHER, Her Majesty agrees that each Band that elects to take a reserve and cultivate the soil, shall, as soon as convenient after such reserve is set aside and settled upon, and the Band has signified its choice and is prepared to break up the soil, receive two hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families one plough and one harrow, and to the Chief for the use of his Band, two horse or a yoke of oxen, and for each Band potatoes, barley, oats and wheat (if such seed be suited to the locality of the reserve), to plant the land actually broken up, and provisions for one month in the spring for several years while planting such seeds; and to every family, one cow, and



every Chief one bull, and one mowing-machine and one reaper for the use of his Band when it is ready for them; for such families as prefer to raise stock instead of cultivating the soil, every family of five person, two cows, and every Chief two bulls and two mowing-machines when ready for their use, and a like proportion for smaller or larger families. The aforesaid articles, machines and cattle to be given one for all for the encouragement of agriculture and stock raising; and for such Bands as prefer to continue hunting and fishing, as much ammunition and twine for making nets annually as will amount in value to one dollar per head of the families so engaged in hunting and fishing.

And the undersigned Cree, Beaver, Chipewyan and other Indian Chiefs and Headmen, on their own behalf and on behalf of all the Indians whom they represent, DO HEREBY SOLEMNLY PROMISE and engage to strictly observe this Treaty, and also to conduct and behave themselves as good and loyal subjects of Her Majesty the Queen.

THEY PROMISE AND ENGAGE that they will, in all respects, obey and abide by the law; that they will maintain peace between each other, and between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians, half-breeds or whites, this year inhabiting and hereafter to inhabit any part of the said ceded territory; and that they will not molest the person or property of any inhabitants of such ceded tract, or of any other district or country, or interfere with or trouble any person passing or travelling through the said tract or any part thereof, and that they will assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this Treaty or infringing the law in force in the country so ceded.

IN WITNESS WHEREOF Her Majesty's said Commissioners and the Cree Chief and Headmen of Lesser Slave Lake and the adjacent territory, HAVE HEREUNTO SET THEIR HANDS AT Lesser Slave Lake on the twenty-first day of June, in the year herein first above written.

**APPENDIX 3: THE ROYAL PROCLAMATION OF 1763**

[sections dealing with North American Indigenous people follow, reprinted in RSC 1970, Appendices, p. 125]

And whereas it is just and reasonable, and essential to our Interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our protection, should not be molested or disturbed in Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them or any of them, as their Hunting Grounds -- We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be Known, to grant warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our Said New Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid:

And We do hereby strictly forbid, on Pain of our Displeasure, all our loving subjects from making any Purchase or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for the Purpose first obtained.

And We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

And Whereas Great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the Great Prejudice of our Interests, and to the Great Dissatisfaction of the said Indians; In Order, therefore, to prevent such Irregularities for the future, and to the End that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council, strictly enjoin and require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said

Indians, within those parts of our Colonies where, We have thought proper to allow Settlement; but that, if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for the Purpose of the Governor or Commander in Chief of our Colony respectively within which they shall lie; and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for the Purpose; And We do, by the Advice of our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to Trade from the Governor or Commander in Chief of any of our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any Time think fit, by ourselves or by our Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade:

And We do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well those under Our Immediate Government as those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Regard, taking especial care to insert therein a Condition, that such Licence shall be void, and the Security forfeited in the case the Person to whom the same is granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And We do further expressly enjoin and require all Officers whatever, as well as Military as those Employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the Use of the said Indians, to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisions of Treason, Murders, or other Felonies or Misdemeanours, shall fly from Justice and take Refuge in the said Territory, and to send them under a proper Guard to the Colony where the Crime was committed of which they stand accused, in order to take their Trial for the same.

Given at our Court at  
St James' the 7th Day  
of October 1763, in the  
Third Year of our Reign.  
GOD SAVE THE KING

**APPENDIX 4: AFFIDAVIT OF GABRIEL BREYNAT - VICAR APOSTOLIC OF MACKENZIE, NORTH WEST TERRITORIES**

## A F F I D A V I T

I, Gabriel Breynat, Vicar Apostolic of Mackenzie, a resident of Fort Smith, in the North West Territories, DO CERTIFY as follows;

1.- I was present when the Treaty No. 8 was made at Fort Chipewyan and Fond du Lac, and signed it as witness in both places.

2.- At Fond du Lac, the parley having proved to be a failure, owing to the fact that the Chief and the Interpreter had come to a fight, in the presence of the Royal Commissioner, The Hon. Laird came to me, with tears in his eyes, and informed me that he had decided to pack up and go, very much regretting not to have succeeded in having the Treaty signed. I then offered myself to act as Interpreter. My offer was accepted.

3.- I persuaded the Caribou Eaters that it was to their benefit that they would accept to sign the Treaty and I gave them my word of honor that the promises made by the Royal Commissioner "although they were not actually included in the Treaty", would be kept by the Crown.

4.- At the request of Dr. D. C. Scott, then Deputy Superintendent of Indian Affairs, I joined the Royal Commission appointed to negotiate Treaty No. 11, with the Indians and tribes settled on the Mackenzie River, and, in his official Report, the Royal Commissioner gives me credit for the assistance actually given to him.

5.- Indeed I may say that I am responsible for the Treaty having been signed at several places, especially at Fort Simpson.

6.- As the text of Treaty No. 8 and No. 11, which had been brought from Ottawa, was not explicit enough to give satisfaction to the Indians, who were afraid to be treated as the Indians of the Prairie had been treated, the conditions of the North being altogether different, the following promises were made to the Indians by the Royal Commissioner, in the name of the Crown.

- (a) They were promised that nothing would be done or allowed to interfere with their way of living, as they were accustomed to and as their antecedents had done.
- (b) The old and destitute would always be taken care of, their future existence would be carefully studied and provided for, every effort would be made to improve their living conditions.



6.- (continued)

- (c) They were guaranteed that they would be protected, especially in their way of living as hunters and trappers, from white competition, they would not be prevented from hunting and fishing, as they had always done, so as to enable them to earn their own living and maintain their existence.

7.- It was only after the Royal Commissioner had recognized that the demands of the Indians were legitimate, and had solemnly promised that such demands would be granted by the Crown, and also, after I had given my word of honor, with the Hudson's Bay Officials and the Free Traders and the Missionaries, who had the full confidence of the Indians, that they could fully rely on the promises made in the name of the Crown, that the Indians accepted and signed the Treaty.

*Km* THIS AFFIDAVIT made in duplicate at Ottawa  
in the Province of <sup>*Ontario*</sup> ~~Alberta~~, this 26<sup>th</sup> day of November  
A. D. 1937.

SWORN in the presence of

*J. D. Macdonald*  
J. D. as Commissioner for  
Oaths. *brother*

+ *E. J. Macdonald* Bishop of Adirondack  
Vic. Ep. of Montreal.

**APPENDIX 5: HISTORICAL CHRONOLOGY OF EVENTS RELEVANT TO UNDERSTANDING TREATY 8 - N.W.T.**

1870-1888 The Federal Government refuses to acknowledge responsibility for Indian non-treaty inhabitants. (Fumoleau 1976:41)

1891 Discovery of Petroleum. The cost and obligations under treaty look minimal compared with the wealth which could be acquired. (Fumoleau 1976:41)

1891 Sir John A MacDonald dies and the money for treaty is not approved. (Fumoleau 1976:43)

1894-1930 White trappers using poison baits. The practise was reported to have been largely stamped out in 1898 but was occasionally used and was a Native complaint a complaint until 1930.(Fumoleau 1976:52)

1896 "An Act for the Preservation of Game in the Unorganized Portion of the Northwest Territories of Canada" is given royal assent in 1894 and comes into force 1896.

This Act stated that it was illegal to kill, shoot at wound or molest in any way buffalo or bison until 1900. It also laid out concerns over other animals - moose, musk-oxen, deer, beaver, swan, ducks, mink, and others. Regulation about bison were seriously enforced 1897-1899. In 1897, hunters at Smith's Landing had not heard of restrictions, were surprised by it. Indian Inspector Jarvis claimed that they willingly gave up their hunt. (Fumoleau 1976:53)

1896 Politicians disappointed with oil exploration lost enthusiasm in negotiating treaty.(Fumoleau 1976:43)

1896-1898 Adventurers and settlers into the north to the Klondike gold fields. (Fumoleau 1976:46)

- 1897-1899     Ottawa prepares for the treaty. Meetings are held where it is recognized that Indians will be more easily dealt with in surrendering their rights than if treating is delayed (when they might "place a higher value on their rights")(Fumoleau 1976:56)
- 1898-1899     Northwest Mounted Police detachment at Fort Smith. (reopened July 23, 1921.)
- 1898           860 Prospectors reach Fort Smith. 70 return to Edmonton or remain in the vicinity of Great Slave Lake. 790 reach Fort Simpson. News that gold mines exist at the eastern end of Great Slave Lake. Prospecting flourishes.(Fumoleau 1976:47-48)
- 1899           Records indicate that mining activity in the area of Great Slave Lake was an important reason for including the area within the boundaries of Treaty 8. The Government wanted to assure its rights to the "loot." (Fumoleau 1976:48)
- 1899           Gold seekers disrupt the life of Native peoples - shoot dogs and horses, break traps. The government is worried about reprisals from Indians who have grievances. This has an impact on the Government's decision to make a treaty in the area. Fumoleau doubts that it was concern over the welfare and protection of Indians that underlay the decision to make treaty; the Government wanted to extinguish Indian title to the land (Fumoleau 1976:48-50)
- The Government also wanted to have greater control over Indians and settlers in the area and wanted harmonious relations between the two. Generally, however, economic considerations took president over other considerations when formulating Indian policy.(Fumoleau 1976:50.)
- 1899           The Treaty party arrives at Lesser Slave Lake on June 20 and Treaty 8 was signed on June 21, 1899.

- 1899      The Treaty party reached **Smith's Landing** on July 15, 1899. 270 Chipewyans were treated on July 17. Very few documents are available of the exact promises offer here. We can imagine that they were not that much different from elsewhere. (Fumoleau 1976:88)
- 1900      Commission visited 4 posts where 1,200 Indians adhered to Treaty 8. **The Yellowknife, Dogrib, Slavey and Chipewyan bands living near the shores of Great Slave Lake met at Fort Resolution and signed the Treaty.** As is the case at Smith's Landing there is little written evidence of what occurred here. (Fumoleau 1976:88) Oral historical accounts name Drygeese as head Chief, Benaiyah and Sek'eglinan as headmen for Wuledeh [Yellowknife River Dogrib Band]. Chipewyan chiefs included Pierre Beaulieu, Louison Dosnoir. Snuff represented the band on the eastern arm of Great Slave Lake. Joe Squirrel singed on behalf of the Fort Smith Indians. Slavey Indians from Hay River (population of approximately 140) went to Fort Resolution and were represented by Chief Sunrise, and headman Old Lamalice.
- 1900      Northwest Mounted Police detachment at Fort Resolution for the summer (reopened September 3, 1913).
- 1897-1900      Reports of widespread hunger from Fort Chipewyan, Great Slave Lake, Fond du Lac. (Fumoleau 1976:55)
- 1905      Gold is discovered at Yellowknife.
- N.W.T. Amendment Act. Northwest Territories divided into four districts - Ungava, Franklin, Keewatin, Mackenzie. Fred White is appointed first Commissioner of the N.W.T. . While the Act allowed for five councillors they were not appointed until 1921 (Fumoleau 1976:329).
- Alberta and Saskatchewan become provinces.

- 1907        Investigations into the number of bison between Lake Athabasca and Great Slave Lake. The largest herd contained 25 individuals. A buffalo preserve proposed the next year.
- 1908        RNWMP detachment established at Smith's landing (closed in 1932).
- 1909        Five yearly mail trips to Fort McMurray, Fort Smith and Fort Resolution. Police report a shortage of furs at Fort Resolution. Second largest staking rush at Pine Point.
- 1910        Dr. MacDonald, the areas first doctor arrives in Fort Smith and stays until 1931. (Fumoleau 1976:331).
- 1912        The 60th parallel is designated as the southern boundary of the N.W.T. The provinces of Ontario, Manitoba and Quebec were enlarged from land included in N.W.T..
- A school was opened at Fort Smith.
- 1913        RNWMP detachment opened at Fort Resolution.
- Drygeese signatory to Treaty 8 dies.
- Land surveys made of northern settlements from Fort Smith to Good Hope.
- 1914        Made Beaver is replaced by cash. (Fumoleau 1976:331)
- The Grey Nuns open Fort Smith Hospital.
- 1915        Snuff, signatory to Treaty 8 resigns as Chief of the Fort Resolution Band. He was 102 years of age.



- Smith's Landing is renamed Fort Fitzgerald.
- 1916 Convention between Canada and the U.S. for the Protection of Migratory Bird.
- 1917 N.W.T. Game Act.
- 1920 Fort Resolution Treaty Boycott.
- 1919-1920 Highest Fur prices due to post-war boom.
- 1920 Fur prices collapse. (Fumoleau 1976:333)
- 1921 Treaty 11.
- Establishment of the N.W.T. Territorial Administration with a staff of 16 men at Fort Smith.
- Three main administrative centres for N.W.T. - Fort Smith, Fort Simpson, Aklavik. W.W. Cory was the first Commissioner of the N.W.T. to visit the N.W.T. when he went to Fort Smith.
- RCMP permanent detachment established in Fort Smith.
- First Bank was opened in Fort Smith. (Fumoleau 1976:333)
- 1930 309 non-Indian residents and 242 non-Indian non-residents were licensed to trap and hunt in the Mackenzie District.
- The administration of natural resources was transferred from the Federal government to the provinces of Alberta and Saskatchewan - NWT Transfer Act. (Fumoleau 1976:336)

- 1931 Joe Squirrel resigned as chief of the Fort Smith Band. He was the last survivor in office of the 1899-1900 Treaty signatories.
- 1933 Gold discovered in Yellowknife.
- 1934 Fort Smith Agency closed.
- 1935 Government grant for the destitute increases from 50 cents a day to \$2.50.
- 1937 Fort Resolution Treaty boycott.

Bishop Breynat collects affidavits from witness to Treaties 8 and 11. Those signing affidavits after witnessing Treaty 8 at Smith's Landing include: Abraham Deneyuchlel, Frederic MacDonald, Johnny Berens, Maurice Beaulieu, Pierre Squirrel, Joseph Marie, Andre Deneyuchlel. Those signing affidavits after witnessing Treaty 8 at Fort Resolution include: Johnny Beaulieu, Alphonse Mandeville, Albert Norm, Louison Beaulieu, Charles C. Gaudet (former HBC Manager), and Charles Gourdon.

Few non-Natives trap - they began prospecting and mining.

Relief to N.W.T. Indians was increased to \$5.28.

RCMP establish detachment at Yellowknife. (Fumoleau 1976: 337, 339).

- 1938 Mineral production exceeds the value of fur production.  
The government established a new trapping licensing system.

Hospital built at Fort Resolution and operated by the Catholic church.

- 1939 No Native in the N.W.T. was yet employed in mining and prospecting.  
(Fumoleau 1976:338)

1960 Parliament amended the Northwest Territories Act and the Yukon Act, by adding the following subsections to the sections conferring legislative jurisdiction to the territories:

Notwithstanding subsection (1) but subject to subsection (3) the Commissioner in Council may make ordinances for the Government of the Territories in relation to the preservation of game in the Territories that are applicable to and in respect of Indians and Eskimos, and ordinances made by the Commissioner in Council in relation to the preservation of game in the Territories, unless the contrary intention appears therein, are applicable to and in respect of Indians and Eskimos."

Nothing in subsection (2) shall be construed as authorizing the Commissioner in Council to make ordinances restricting or prohibiting Indians or Eskimos **from hunting for food, on unoccupied Crown lands, game other than game declared by the Governor in Council to be game in danger of becoming extinct.**

(Department of Indian Affairs and Northern Development, 1979. Appendix 1(c))



DEH CHO TRIBAL COUNCIL  
REQUIREMENTS FOR THE SETTLEMENT OF DENE GOVERNMENT  
IN THE NORTHWEST TERRITORIES.

As presented to the Minister of Indian Affairs  
the Honourable Ron A. Irwin

March, 1994.





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## INTRODUCTION

The leadership of the Deh Cho Tribal Council would like to welcome Mr. Erwin and members of his staff to their traditional lands. The members of Council look forward to this opportunity to present to you our aspirations for Dene government and the principles that would provide the foundation for this Deh Cho First Nations government.

For the past two years, the leadership of the Deh Cho First Nations have directed research and consultations with the elders of the Region, in order to confirm the principles and structures that would be required for Dene government in the Deh Cho.

This past work has strengthened the commitment that originally led to the Indian Brotherhood's Dene Declaration; as well as the Deh Cho First Nations' government position on our inherent right to government. This work has offered the context and direction for decisions surrounding the establishment of a First Nation government in the region and that government would relate with broader Canadian government structures.

It is not the intention of the leadership to lecture you on the historical realities of this Region, however it is crucial that an awareness of the cultural and historical realities be reached in order to appreciate the boundaries to the options and decisions of the leadership.

It must be emphasized that the present leadership has directed all work to be forward thinking and focussed on resolving the differences between First Nations needs and Government policies.

It is the leadership's intention to present to you in summary, the Dene understanding of the Treaty relationship that was established by our elders in 1921 with the Crown. It is this relationship that is central to the decisions of our First Nations in regards to land and jurisdiction over these lands.





## THE DENE AND THE LAND

As Dene we have always known and have always believed that we are an inherent part of a creation with a natural order to which we have to conform if we are to survive as a distinct people.

We believe that all of creation: stars, planets, rock, water, air, fire, plants, animals and people have spirits with them; that all of creation, as experienced by everyone whether Dene or not, whether experienced differently or the same, is the product of the will of spiritual beings working in concert with the Creator. In the Dene teachings, the Creator is not named or spoken of directly but the teachings awaken a powerful awareness of the presence, the immediacy and the power of the Creator.

We know from our teachings that human beings were the last beings to be created. Being the youngest of creation we accept that we are the least knowledgeable and least capable of survival on our own in this world.

It is the rest of creation which has made it possible for us to survive: As our elders teach, the rock saw the confusion of our emotions and knew we would have a hard time to communicate. The rock offered to communicate with the Creator for us if we would ask. The animals agree to give themselves to us for food, medicine, clothing and shelter as long as we lived according to the laws given to us by the spiritual helpers and the One who is above all of creation. The plants agree to give us their being for food and medicine.

The mother earth herself is a living conscious being who provides the environment for life as we know it. Her spirit can take human form and communicate with any individual she chooses. The sun too is a living conscious being who makes it possible with his light and heat and will for the earth to give us life.

According to our beliefs, the Spirit of Creation and the land are determining forces in the governance of Dene life. At the time Treaty 11 was signed Dene culture was still intact in its social, political, and spiritual manifestations. Our leaders of the day were bound by the social norms, the beliefs and customs of a culture which spanned more than ten thousand years.

The Land has to be obeyed. She provides all the necessities of life. The Dene are given the responsibility to continue to live with her in that part of her being which has generated the Dene way of life, to govern themselves at personal, family, regional and national levels in a manner which honour and respect her. This is fundamental to survival. To disrespect the spirit of the land is to disrespect life. It is to invite death. This belief extends to people, animals, and tools used to bring food and so life into the home.

The Dene have always recognized that the Creator provides life and the Dene way of life through the land the Dene inhabit. To give up the land is to give up life and culture which the Creator provides. In 1988, Mary Firth, an elder from Fort McPherson stated the following about the Dene/Metis Agreement in Principle: "For me, I am being asked to give up the life which our Creator has always provided us and to take a life which will be provided by the government of White people. They are not God."

Early in 1990 Fort Simpson Elder William Antoine voiced his concern: "I do not want the people to make a decision about the land before I die. ... I do not want to be among the ones who will have to tell our ancestors that we gave up the land they left in our care to the White people."

We believe that our very bodies are an intrinsic part of our land. At the leadership meeting of the Dene Nation in Fort Norman, February 1990, Dene elder Fred Andrew spoke to the leadership with tears running down his face. He said: "You cannot give up one clump of dirt. It is our blood."

## COMPREHENSIVE CLAIMS POLICY

The Deh Cho First Nations have examined the existing claims policy to determine whether our need for self-determination could be met by entering a claims process. The defining relationship for the Dene of the Deh Cho is the land. The elders have clearly directed the leadership to maintain that relationship at all costs. The existing policy is premised on the extinguishment of that relationship with land. As we have noted it is inconceivable that the leadership of this region would enter into any agreement that erodes the very nature of ourselves by extinguishing title. As the Declaration of Rights of the Deh Cho First Nation states "Our laws from the Creator do not allow us to cede, release, surrender or extinguish our inherent rights." The existing Comprehensive Claims policy denies the continuing existence of the Dene as a people and violates the aboriginal and treaty rights of the Dene.

### TREATY LAND ENTITLEMENT

The federal process of treaty land entitlement presupposes that Treaty 11 was a treaty of cession rather than of peace.

Under treaty land entitlement, reserves are created or added to, under the principle of extinguishment of aboriginal title.

The Dene understanding of Treaty 11 rejects this process.

The First Nations see self-government as a means of resolving the land issue in the region. We interpret our inherent right to government in terms of exclusive jurisdiction over our traditional lands of the Deh Cho.

### Administrative Transfer

The First Nations view the administrative transfer of federal responsibilities to the NWT as problematic for several reasons: the Indian/Crown relationship is undermined, the assignment of 91(24) jurisdiction is unconstitutional, the First Nations did not consent, the unanswered question of whether obligations under the assignment were fulfilled, the discriminatory funding of services, the violation of existing aboriginal claims in the Deh Cho, and the inconsistency with the development of the inherent right to government.

The Dene see the resolution of this problem in terms of a direct transfer of funds to the Deh Cho First Nation government through a global financial arrangement.

## TREATY AND LAND

Treaty 11 was entered into by the Dene, with the intent of improving living conditions, and as a sacred trust which we are required to keep in order to obey our elders and be able to live with them peacefully when we go to the next world. The treaty was sealed by the Dene with a hand shake, a sign for the Creator to witness and bless the agreement, it is also a vow to the Creator by the Dene that as a people they will maintain the peace.

Thousands of years of history stood behind the Dene as the treaty party approached. Each of the Dene present were raised on the land with the history, their social organization, their religion, their understanding of the fundamental relationship between themselves and the land. Each knew from experience as children, parents and leaders that the land provides for those who respect her.

Given the social and historical context of the meetings between the Dene and the treaty party, it is impossible to believe, as Indian Affairs would have us do, that the Dene knowingly ceded their lands to the Crown. At that time, in the places where the treaty was signed, the Dene were the obvious power, the majority, and vast distances from any potential threat from the government.

The facts that the Dene then and still believe that the land is the blood of the people; is the conscious being from which the Dene are called to learn the Creator's will; is the provider of Dene life; and, given the fact that the Dene still believe that the land and the people are one; that the land belongs to the Dene and the Dene belong to the land; and that a living relationship with the land is an inherent function of Dene religious beliefs, which again makes it inconceivable that the leadership in 1921, which held the same beliefs, would knowingly give up the land.

It is from this historical perspective of the Dene that one will understand the Dene position with respect to Treaty 11. That is, the Dene agreed to allow the subjects of the Crown to live on Dene lands in peace and friendship, and that in return the Crown would provide certain benefits to the Dene. Some of those benefits are spelled out in the government's written version of the treaty, others are evident in the affidavits signed by witnesses to the treaty negotiations and oral testimony given by the Dene negotiators.

Euro-Canadian processes of decision making and values for the Dene has meant disorientation, confusion, lack of control over government structure and process, displacement from customary land use base to government controlled communities, dissolution of customary social and political order, weakening of economic and spiritual ties to The Land, Dene laws, the teachings and the Creator. This has resulted in opening the Dene to the onslaught of what the Dene spiritual leaders called disease. It is true what the Dene prophets foretold: Strangers would bring sickness among us.

We believe it is the Creator's will that we exist as Dene; in a way of life which provided for good people to live together in harmony with each other and with The Land. Today we are suffering



from the good intentions of governments and Churches from other parts of the world. If a person is not Dene how can they possibly know what is good for the Dene? They cannot.

Good government for the First Nations will bring peace back into the families and communities of the First Nations. Good government for the First Nations will be government according to the needs of the First Nations and the will of The Land and the Creator as understood and lived by the First Nations. Good government for the First Nations will be government according to Dene law, social and political structure and economic activity which honours the rights of The Land and the responsibilities of the First Nations to live according to the will of the Creator.

Until the above concepts are made reality again, as they once were, the First Nations will continue to suffer under the Dominion of foreign interests and governments; the First Nations will continue to live under a state of seige. Until we Dene govern ourselves diseases such as alcoholism, sexual abuse, abuse of elders, and other forms of criminal behaviour will continue. Until the we govern ourselves there will be no good government.

The Peace Treaty which the Dene entered into with the Crown recognizes the sovereignty of both parties within their own territories; it recognizes the reality of each others existence and needs; it recognizes the potential for each party to assist the other in meeting their needs through a fair trade of access (without interference to Dene way of life) to Dene lands for minerals in exchange for benefits, as a treaty right, from the Crown to citizens of Denendeh.

The Treaty constitutes a social contract between the Dene and Canada which the Dene have upheld at great expense to their social, political, spiritual and economic life, and which the Crown has breached at every turn to further its intent to acquire complete dominion over Dene lands and lives<sup>2</sup>.

The Deh Cho region composed of ten communities remain firm in its' position on keeping the Treaty and seeking a constitutional relationship with Canada, which will recognize Dene aboriginal title to their lands and provide for Dene law and custom to stand as the basis of First Nations government in the Deh Cho.

#### END NOTES

1. Georges Erasmus, Drum Beat, Assembly of First Nation. The above book is not available to the author at this time, however, according to Bill Erasmus similar information is provided by Georges Erasmus in the Forward of Drum Beat.
2. Sally Weaver, The Hidden Agenda, The reader is referred to this book for published material which substantiates the statement.

J. Rick Ponting, Arduous Journey Canadian Indians and Decolonization, Chapter One, Historical Overview and Background pp. 18 - 56.

## SUMMARY OF THE PRINCIPLES OF THE CONSTITUTION OF DENENDEH

### I Introduction

The First Nations of the Deh Cho Tribal Council interpret their inherent right of self-government in terms of their jurisdiction over the Deh Cho (their traditional territory) within the western NWT. They desire the recognition of their inherent governing authorities by a federal Denendeh Act and the creation of a new territory composed of the Deh Cho region. The Constitution of Denendeh will structure, provide procedures and create laws for the desired governments. The structures and jurisdictions of the Deh Cho First Nations will reflect the traditional principles and values of the Dene. To be effective and to prevent the duplication of government, the jurisdictions of the governments will also apply to non-aboriginal persons who are found within the Deh Cho territory. The closest analogue of the form of government desired by the First Nations of the Deh Cho is that of a province; however, given the unique aboriginal and treaty rights attaching to the Deh Cho the model of government will be *sui generis* (totally unique) as federal jurisdictions and powers may be reflected in the government structures and jurisdictions. The criteria for the structuring of the government will turn on efficiency, accountability and the balancing of traditional and contemporary institutions and procedures.

To give some context to the objectives of the Constitution of Denendeh the following background has to be taken into account. In the wake of the division of the NWT the NWT Constitutional Development Committee has suggested two ways of accommodating the constitutional development of the western NWT and First Nation government: an integrated (First Nation concerns would be dealt by existing institutions and procedures) and a parallel system (one central government and several First Nation governments). The option favoured by the GNWT is the integrated system as in the opinion of the GNWT it can best accommodate First Nation and non-Indian concerns. The GNWT is under estimating the complexity of self-government and land claims as they cannot be accommodated by a centralized public government system. The new charter for the government of the NWT will effect the operation of the Indian Act, Treaty 11, existing Aboriginal and Treaty rights under s.35 of the Constitution Act 1982, and the Crown's fiduciary relationship and duties to the First Nations of the Deh Cho. The ultimate goal of the GNWT is the creation of a province. This is evident from the fact that the GNWT is presently cloaked in provincial powers (the Northern Accord would have completed the formal transference of rights and powers parallel to that of a province). This outcome

will marginalize First Nation Governments.

The Deh Cho Tribal Council rejects the NWT's approach in favour of the line of strategy based on the inherent right of self government attaching to a new territory in the Deh Cho.

Other factors that necessitate the constitutional development of Denendeh turn on the undermining of the Indian/Crown relationship in the guise of the transfer of the administration of matters pertaining to Indians found in the NWT and the failure of the Crown to fulfil its obligations to recognize Dene interests to land under Treaty 11. Both concerns are addressed by the Constitution of Denendeh.

## II. The Rights and Needs of Non-Aboriginal Residents under the Constitution of Denendeh

1. The governments of Denendeh will deliver services to member and non-member residents; transfer payments will have to reflect the cost of the delivery of services to all residents.
2. All rights of Canadians guaranteed by the Charter (democratic and legal rights, etc.) shall be respected by the Governments of the Deh Cho; however, special provisions will protect aboriginal concerns (eg. a perpetual aboriginal deciding vote on all matters directly effecting aboriginal and treaty rights).
3. Non-aboriginal may hold interests in land and conduct business in accordance with the laws of Canada and Denendeh. Non-aboriginal will be given an opportunity to participate in government councils and hold positions in the administration and courts of Denendeh.
4. Just as residence within any province guarantees a person with rights, residency in Denendeh will guarantee rights. These rights like those rights of Canadians in other parts of Canada must be balanced with aboriginal and treaty rights. In addition, the government institutions in Denendeh will be sensitive to the special land rights of the First Nations and the need to have a homeland for the First Nations.
5. The model of government replaces an emphasis on central government in favour of local government. Hence the residents of Denendeh will have greater freedom, rights and input to government at the local level; the present model of government allows for governance from a distance eg. Ottawa and Yellowknife. The government of Denendeh will be a government for all residents in the Deh Cho. The government of Denendeh will be more efficient, accountable and sensitive to the needs, rights and protection of all of its citizens.

### III. The Principles of the Constitution of Denendeh

#### 1. Status and Capacity of the First Nations of Denendeh

1. The Deh Cho First Nation Government shall be a distinct legal entity with the powers of a government (with special powers and Privileges) and a natural person (authority to sue, contract hold interests in land, etc.);
2. The status and capacity of the Deh Cho First Nation government will be recognized by federal legislation (Denendeh Act);
3. A three Branch Government (legislative, executive and judicial) shall function in accordance with the Constitution of Denendeh;
4. Deh Cho First Nation Governments will replace the Indian Act band councils and NWT municipal governments, all assets and liabilities of these governments will vest in the Deh Cho First Nation Governments.

#### 2. Structures of Government

1. Deh Cho First Nation Government will be composed of Denendeh First Nation Councils (legislative/executive) and judicial branch (Denendeh Courts), a senate of elders will serve as advisors to the elected councils; these governments will have jurisdiction over their traditional regions and will serve as the basic unit of government;
2. Deh Cho First Nation Government may delegate powers to boards that it may create and regulate; authority may also be delegated to a confederacy of Deh Cho First Nations which will have jurisdiction over all matters of mutual concern to the regional governments;
3. Tribunals and boards shall serve as mechanisms for the administration of various matters: land, natural resources, water, environment, membership, education, social services, the regulation of business, health and culture etc. The extended family (the traditional political unit in Dene life) shall have a central role in the composition of boards and Tribunals. Judicial review of the decisions and actions of the boards and tribunals shall be done by the Denendeh Court.
4. Deh Cho First Nation Government will be accountable to the residents of the Deh Cho;
5. The Constitution of Denendeh shall be ratified and amended by the electors resident in the Deh Cho (residency requirements) as per the Constitution of Denendeh, special provisions will protect aboriginal concerns (eg. a perpetual aboriginal deciding vote on all matters directly affecting aboriginal and treaty rights);
6. The Constitution of Denendeh shall be written and shall provide for the structures and procedures of government and the creation of laws.



### 3. Citizenship/Residency

1. The Deh Cho First Nation Government shall create a Citizenship Code which will recognize its aboriginal and non-aboriginal citizens. The citizenship code shall be subject to the Charter, shall be in writing, and shall have an appeal mechanism. Residency shall be determined by a Residency Code.

### 4. Selection of Leadership

1. A Denendeh First Nation election Code will provide for the recognition of custom selection of leadership, the removal of leaders and will constitute the election procedure under the Constitution of Denendeh.

### 5. Laws Applicable to the Deh Cho

1. The Denendeh Act will replace the application of the Indian Act and all the NWT Act and all laws of under it;
2. Certain section of the Indian Act will be duplicated in the Denendeh Act; eg. the definition of "Indian" in s. 2);
3. Deh Cho First Nations laws will apply to aboriginal and non-aboriginal;
4. All federal laws not inconsistent with the Denendeh Act will continue to apply.,

### 6. Management of Lands and Resources, Environment and Water

1. Title to Deh Cho lands shall be with the Crown in right of Denendeh; the lands will be held in trust for the use and benefit of the First Nations;
2. Deh Cho First Nation Government shall have exclusive legislative jurisdiction over granting interests, use and management of non/renewable resources, environmental protection, access, acquisition for communal use, locating roads and trails, inspection of premises for health and safety purposes, and any ancillary matters;
3. Deh Cho First Nation Government shall have administrative authority to manage Deh Cho lands;
4. The Deh Cho First Nation Land Board shall review management and administrative activities -- affected extended families will have a special say regarding the use of their traditional lands;
5. Denendeh land legislation will provide for a lands register of all registerable interests in Deh Cho First Nation lands
6. Deh Cho First Nation Government shall have legislative jurisdiction over: environmental assessment, hazardous wastes, solid wastes, land fill sites, air and water pollution and the protection of the Deh Cho environment; the principles of environmental protection shall include: the integrity of ecosystems, responsible, sustainable development, the mitigation of damages,



co-operation with other governments, polluters will be punished by fines, imprisonment and community service; Deh Cho First Nation environmental standards and procedures shall be at least equivalent to those of other governments.

7. Deh Cho First Nation Government shall have jurisdiction over, but not limited to, the regulation use, quality and quantity of: surface and ground water, beds of water and fish wildlife within them.

#### 7. Financial Arrangements

1. Deh Cho Financial Transfer Arrangement (FTA) will be similar to a federal/provincial transfer payment and should be based on the following principles: funding for a three branch government, funding equivalent to that provided to other Canadians, money for each area jurisdiction, start up funding (training and infrastructure) and on going funding to cover all services and the maintenance of statutory programs;

2. Moneys transferred to the Deh Cho First Nation Government will be identified on the federal main estimates;

3. Deh Cho First Nation Government will provide audited financial statements to account for the use of transfer moneys.

#### 8. Administration of Justice

1. Deh Cho First Nations shall have exclusive legislative jurisdiction over the administration of justice regarding review of legislation and executive acts, enforcement of law, prosecutions, representation in the form of a cultural-legal advocacy program, translation services, legal aid, adjudication, rehabilitation and corrections;

2. The Denendeh Act shall recognize and structure the Denendeh Court (DC);

3. The DC shall have exclusive jurisdiction regarding: the judicial review of the Deh Cho First nation Government and its delegates, Criminal Code offenses, offenses under Deh Cho laws and civil matters arising within the Deh Cho;

4. To the extent agreed to by other jurisdictions the judgements and orders of the DC shall be enforceable in and through other courts; except that any order or judgement of the DC pursuant to the Criminal Code of Canada shall have force and effect throughout Canada;

5. Deh Cho First Nation Government may create the office of Deh Cho public trustee, medical examiner and a Deh Cho legal aid system;

6. The DC may impose punishment by way of fines, penalty or imprisonment and any traditional forms of rehabilitation (eg. community service) and grant prerogative remedies;

7. Deh Cho First Nation Governments shall have jurisdiction as it pertains to corrections.

9. Specific areas where the Government of the Deh Cho Shall exercise jurisdiction:

Education Social Services

Health Care

Public Works and Community Infrastructure

Traffic and Transportation Licensing and Regulation of Business

Public Financial Powers such as revenue generation by way of taxation and debt financing.

Culture, Language and Heritage

"IT WAS ONLY A TREATY"<sup>1</sup>

TREATY 11

ACCORDING TO THE DENE  
OF THE MACKENZIE VALLEY

Prepared for  
The Deh Cho Tribal Council,  
The Dene Nation and  
The Royal Commission on Aboriginal Peoples

by Rene M.J. Lamothe  
December, 1993



## EXECUTIVE SUMMARY

Treaty 11 was entered into by the Dene, with the intent of improving living conditions, as a sacred trust which we are required to keep in order to obey our elders and be able to live with them peacefully when we go to the next world. Because the Treaty was sealed by the Dene with a hand shake, a sign for the Creator to witness and bless the agreement, it is also a vow to the Creator by the Dene that as a people they will maintain the peace.

The government simply wanted clear sovereignty and Dene lands to prepare the way for White settlers to make money. Evidence, of both written and oral accounts of the meetings between the Dene and the treaty commissioners, points to duplicity on the part of the government. The Crown's Treaty Commissioner went as far as to deny that the Treaty money was in exchange for Dene lands.

The Church intended to civilize and christianize the Dene. The hierarchy of the Church recognized that an alliance with the Crown was in the Church's interests in Canada. The Roman Catholic Bishop Breynat of the Mackenzie accepted to help the government cozen the Dene of their rights and lands. Breynat must have believed that the government would provide for the Dene better than the land and the Creator provided for them.

Breynat's primary interest appears to have been that of the Roman Catholic Church as an institution with lands, assets and financial resources. He appears to have been willing to sacrifice Dene rights, social order, political jurisdictions and lands to achieve his objectives.





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## OUTLINE

This paper discusses the following topics relating to the Dene understanding of Treaty 11:

- BACKGROUND ON THE DENE will introduce concepts of Dene language, history and cosmology, including information on Dene beliefs, laws, collective and individual rights and responsibilities.
- AN OVERVIEW OF GOVERNMENT AND CHURCH INTERESTS in Denendeh identified through archival research.
- DENE vs BRITISH COMMON LAW CONCEPTS OF LAND: a brief discussion on concepts of land from Dene and Common Law traditions.
- PERSONAL ACCOUNTS OF MEETINGS WITH THE TREATY PARTY: Quotations from interviews with Dene leaders who negotiated with the Treaty Commissioners in 1921 and from elders alive today who either witnessed the negotiations or were raised by the Dene who negotiated the Treaty. These quotations are taken from the testimony given during the legal proceedings of the application of Paulette et al to apply a caveat on their lands, and from other interviews conducted since that time and housed in the Dene Nation archives and in the office of the Deh Cho Tribal Council. The intent of this section is to give the reader a first hand account of the Dene position and involvement in the Treaty making process.
- PEACE TREATY Treaty 11 as understood by the Dene. See also the paradigm in Appendix "E". The wording of this section meets a Dene way of communicating.
- DENE SELF GOVERNMENT. This section outlines the form and process of Dene government before contact, with some discussion on the present system of Band Councils.
- PEACE ORDER AND GOOD GOVERNMENT A brief discussion is provided to help the Commission better understand the perspective the Dene from the Deh Cho have about the difficulties presented by how government is presently conducted in Denendeh and some discussion on the nature of the constitutional relationship which, it is believed, already exists between the Crown and the Dene as a result of Treaty 11. See Appendix "E".

## INTRODUCTION

As outlined above, this paper presents information which is necessary to understand the Dene position on Treaty 11. The section which provides some background information on Dene life will help the reader come to realize that the Dene leadership who negotiated Treaty 11 were constrained by their beliefs and laws in what they were able to agree to. It is for that reason the Dene leaders were so insistent on knowing specifically what the Treaty Commissioners intended and meant by their words and proposed actions of paying money for Treaty.

The paper provides a very limited sketch of the interests which the government and the Church had in manipulating the Dene into Treaty. It is evident from the available written documents and the oral history of the Dene that the Commissioners omitted to inform the Dene that the government's intention was to have the Dene cede all their rights, interests, and lands to the Crown.

There is a fairly lengthy section of quotations from Dene who witnessed the negotiations or were actual negotiators of the Treaty. The quotations from the people who were leaders in 1921 are drawn from interviews conducted by researchers for the Dene Nation and from court testimony given by the Dene leaders during the Paulette case.

The last sections discuss current issues from the Dene perspective. These include a draft of the oral version of Treaty 11, an outline of the Dene self government framework and discussion on the current constitutional relationships.

## BACKGROUND ON DENE LIFE

### Language

The Dene languages are powerful complex languages. "If you consider the experiences of people who have studied the Dene languages, you will find that they all have had great difficulty to learn it. You know Phil Howard. He has been studying the language since he came North in 1953. He still claims that he may never know the full meaning behind the words the way a Dene elder does."<sup>2</sup>

"The verb system is the most complex of Slavey word classes and constitutes probably seventy-five percent of the language"<sup>3</sup> In a further personal communication, Andy Norwegian gave the example of the Dene (Slavey) verb TO GO. He stated that the verb TO GO has sixty forms. (See appendix A)

"The Slave verb is complex in structure. Every verb consists of a stem and prefixes. These prefixes are inflectional, specifying person, number, conjugation, aspect, and mode, and derivational, basically adverbial. ... The verb prefixes occur in a relatively fixed order before the verb stem. This order is...



|     |                                     |    |             |
|-----|-------------------------------------|----|-------------|
| 000 | adverb                              |    |             |
| 00  | object of incorporated postposition |    |             |
| 0   | incorporated postposition           |    |             |
| 1   | adverbial                           |    |             |
| 2   | distributive ya-                    |    |             |
| 3   | customary na-                       |    |             |
| 4   | incorporated stem                   |    |             |
| 5   | number                              | 10 | conjunction |
| 6   | direct order                        | 11 | mode        |
| 7   | deictic                             | 12 | subject     |
| 8   | theme/derivation                    | 13 | classifier  |
| 9   | aspect/derivation                   |    | stem        |

"The basic verbal unit is the verb theme. The verb theme consists of the classifier, the verb stem, and any prefixes that must always occur with the classifier and stem. Thematic prefixes occur in verb prefix positions 0, 1, 4, 5, 6, and 8. Some verb themes consist of only a classifier and stem while other contain one or more of these prefixes in addition. ... Elements of the verb theme cannot be assigned individual meanings; rather the meaning lies in the theme as a whole. The verb theme forms the foundation for the derivation of all verbs words built on that theme.

"The verb base is composed of the verb theme and any derivational prefixes that occur with it. The verb base does not include conjugation, mode and person prefixes. A large number of bases can be formed on a common verb theme by adding permissible derivational prefixes. The verb form or verb word is an inflected verb base."<sup>4</sup>

The above information on the Dene language is presented to help the reader understand that the Dene who negotiated Treaty 11 were very sophisticated communicators. Many Dene elders today are fluent in more than one of the Dene languages. Some of them also speak French and English.

### History

Today one has to look to the elders who were raised on the land to get information on Dene history. At the turn of the century, when the Dene education system was intact, most of the Dene knew something of their history. The generation of leaders and elders who negotiated Treaty 11 were all raised on the land and members of a society which had clear expectations of their leaders. Knowledge of Dene teachings was one of the expectations which they had to meet.

### Ancient or legendary history

Dene historical information speaks of experiences throughout the Western Arctic from the "barren lands" along the Hudson's Bay

North to the Arctic Archipelago and West into the mountains of what is now called the Yukon, Alaska and British Columbia. The information covers a vast span of time. Teachings entrenched in Dene oral history predate the last ice age. Yamoja whom many Dene elders today refer to as the saviour of the Dene, came at a time when beaver were as large as black bears today, and when eagles were huge birds of prey which fed on people.

Yamoja killed off the older animals which had grown to full size and were harmful to people, and changed the nature of their young so that they would not grow big enough to harm people. He communicated with animals and told those animals which did not harm people to go into the ground to avoid the long cold winter which he would bring to the land. He gave the Dene laws to live by and told them that they would survive as a people until the end of time if they obeyed his laws.

Acquiring knowledge of Dene legends awakens a very powerful awareness in the learner of a being who is all knowing and all powerful. In communicating knowledge in the traditional way, the being is never referred to directly and is not named. A very clear sense is generated in the learner that this being oversees and governs all that is. Today older Dene people refer to this being with a gesture of the hand upwards and the words "Our Boss"; many younger Dene have taken on the English term Creator or God.

#### Place names

Place names are used like library index cards by the Dene.<sup>5</sup> Each place name has an accompanying story which tells of the historically significant event that took place there. During the 1970's the Dene Nation sponsored a land use research project which identified about 20,000 place names. Further research by the University of Alberta Department of Anthropology has led at least one person (Tom Andrews) in the department to claim that 50,000 Dene place names in the Mackenzie valley would be a conservative estimate. Some of the stories take up to several days to tell. Others would take only a minute or so. If the average story rounded out to about fifteen minutes to tell, then the 20,000 place name would fill more than 20,000 pages of historical information.

The legends were known through out the valley. Other historical information such as the peace treaty with the Cree in the 1700's and the peace treaty between Edzo and Akaitcho's peoples were commonly known throughout the valley. Many of the other stories were of regional or local significance.

The reader should take some time to reflect on the natural impact oral history plays in an oral society. In good part, it is the oral history which generates the identity and sense of belonging to a very specific social-political-cultural group. To understand the Dene perspective on the treaty negotiating process the reader has to recognize that the Dene were a highly cultured people. A people with such a high value code that they would even sacrifice their personal comforts out of respect for the land and

animals which provided their livelihood. (See the section on spiritual order below.)

### Contemporary History

The term contemporary is used here for want of a better word. There are some events which are relevant to the readers understanding of the information and concerns which the Dene leaders brought to the negotiations of Treaty 11:

- a) The fur trade impacted Dene culture, bringing new technology, new markets and new sources of goods. The fur trade also brought access to a different vision of reality. One of the significant impacts which this had on the Dene was to provide some Dene with the option to seek to make a living from the traders rather than from the land. This has diversified the living experiences of Dene and has impacted on values, interests and socio-political structures and goals.
- b) The Christian religions, residential schools and hospitals have also played a significant role in changing Dene culture. For the Dene, honesty is fundamental to the survival of the people. Living so close to nature, the Dene knew from empirical evidence that a lie was capable of killing a person as effectively as a weapon. When the missionary claimed to be the spokesman of God he was implicitly believed. The clergy acquired significant influence from the relationships with the Dene which flowed from their words.
- c) After the conflict at Batoch, many Metis and some Indians from Saskatchewan and Alberta moved into Dene country. They brought with them their knowledge of the White man and his politics. One very significant individual in this migration was Robert Erasmus, the son of Peter Erasmus who wrote Buffalo Days and Nights. Robert worked in Fort Wrigley and later married and settled in Fort Rae. Like many of the other people who moved into Dene country, Robert was very well educated in the ways of the land as well as the ways of white people. He spoke Cree, English and Dogrib. Other people who moved North after 1885 learned other Dene languages. They shared their stories with the Dene. That information helped the Dene better understand the way the white man communicates to get his way.

### Economic conditions

It is important for the reader to be aware that the Dene were not a people living in stark poverty, from hand to mouth, on the verge of starvation, as typically described in some non-Dene accounts written during the period of first contact. Besides those negative accounts there are significant written documents from non-Dene observers that the Dene who lived year around on the land were

healthy, wealthy and well organized. Dene information also gives the same truth. Before contact the Dene were very numerous and living successfully from the goods of The Land. Today some people say it is not possible to live off the land. The Dene teach that not only is it possible, but that the land could support many more people if everyone lived according to the laws which The Land gives.

The following examples are fair representations of the type of written and oral information about Dene health and well being before White trappers and government game laws were imposed:

"And during that period of aboriginal domain there never was any serious anxiety as to the extinction of fur bearers or food sources. Cycles came and went and the native met the situation in his own way. The trade prospered and 'relief accounts' were an unknown quantity."<sup>6</sup>

"Berries, poplar sap, wild carrots, we ate anything. ... That is why on this land Dene were strong and healthy. Beaver meat, wild chicken, fish, anything. All those were eaten, that is why the people on the land were strong. Even though it was 40 below it did not bother anyone. Even though it was cold children had their snowshoes on and were all over the place. They used to live strong and healthy."<sup>7</sup>

### Spiritual Order

As Dene we have always known and believed that we are an inherent part of a creation with a natural order to which we have to conform if we are to survive as a distinct people.

We believe that all of creation: stars, planets, rock, water, air, fire, plants, animals and people have spirits with them; that all of creation, as experienced by everyone whether Dene or not, whether experienced differently or the same, is the product of the will of spiritual beings working in concert with One who is the Boss of all. In the Dene teachings, the One is not named or spoken of directly but the teachings awaken a powerful awareness of the presence, the immediacy and the power of the One.

We know from our teachings that human beings were the last beings to be created. Being the youngest of creation we accept that we are the least knowledgeable and least capable of survival on our own in this world.

It is the rest of creation which has made it possible for us to survive. The rock saw the confusion of our emotions and knew we would have a hard time to communicate. The rock offered to communicate with the Creator for us if we would ask. The animals agreed to gift themselves to us for food, medicine, clothing and shelter as long as we lived according to the laws given to us by the spiritual helpers and the One who is above all of creation. The plants agreed to gift us with their being for food and medicine.



The earth herself is a living conscious being who provides the environment for life as we know it. Her spirit can take human form and communicate with any individual she chooses. The sun too is a living conscious being who makes it possible with his light and heat and will for the earth to give us life.

Dene teachings do not only speak of benevolence. There are teachings of creatures who sought to kill people. Giant eagles which fed on people. Giant beaver which would capsize boats to cause the people in them to drown. There are teachings of giant animals which are still alive but sleeping underground and feeding from their dreams. These concepts sound far fetched; perhaps even ridiculous to the non-Dene reader, yet they are considered very real and still have consequence today to the Dene. For example the writer's family has a fish camp on a lake where the family is allowed to travel by boat and to fish for food but where the family is not allowed to bathe or swim in the lake because the lake belongs to the beaver. Those laws are still obeyed today. Even today a Dene does not tempt the spirit by disobedience.

In the time of giant animals a person came among the Dene. A person who was very knowledgeable and powerful. Today many Dene recognize him as a saviour of the Dene. He is the one who killed the giant eagles and changed the nature of their young so that they would not grow any larger. He then taught them to fish for their food. He is the one who killed off the giant beaver and changed the nature of their young so that they would not grow large enough to harm people. He warned the other giant creatures that they should go into the earth to sleep. They complained that they would not be able to feed. He fixed it so that they could feed from the food that they would dream about in their sleep. He brought an intense cold that lasted a long time to force those creatures into the ground. In time this saviour fixed the lands for the Dene so that they could live in security and peace. His name is Yamoja.

As he travelled around the world fixing everything for people many travelled with him. He taught the people who travelled with him by how he lived and with words. Many of his teachings were given as laws for all of the people to follow. In that way laws which apply to the whole Dene Nation were given. All the Dene peoples have teachings from Yamoja. He left his signs on the land everywhere he went. There are giant beaver lodges all over Denendeh from which he chased the giant beaver.

Before he left Yamoja stretched three large beaver hides on Bear Rock, he lit a fire and cooked the meat of the beaver to feed the people, then he went up onto Bear Rock (the mountain at the mouth of the Bear River). He shot two arrows into the mouth of the Bear River and told the people "I leave these signs as a reminder of the laws I have given you. If you follow them you will survive as a people until the end of time."

Since the time of Yamoja there have been many prophets among the Dene who knew and spoke with the spirits of the earth and her sister planets. They knew and spoke with plants and animals. They were gifted dreamers. These prophets were great men and women whose knowledge was so extensive they could heal diseases, banish evil



spirits from among the people, send hunters to precise locations where animals were waiting to give up their life for the people, look into the future and advise the people about the proper conduct to be taken in the times ahead.

One of the prophecies foretold the coming of people with pale skins who would have to be taught how to survive in Dene country. The prophet Naedzo who gave this knowledge to the people said that after the first ones to arrive had learned how to survive they would send for their relatives. When there were enough of them they would ignore the Dene and begin removing parts of the earth and sending it back where they came from in containers (mining). He said that during that time there would be a great battle of the spirit between the Dene and the people with pale skin. He said that the people with pale skin would bring disease among the Dene. This is the origin of the Dene term to designate White people (mehla: with/disease). He gave a teaching for the leadership to follow during that period. He said that the people should not become too excited during that period because almost as soon as it would begin something would happen in the lands where the people with pale skin came from and they would all leave. He also said that after they leave the Dene will have to go back to living as their ancestors did. In this way he also inferred that during the period of White people living among them the Dene would change and let go of much of their original land based way of life. For the Dene today, much of this prophecy has come true. The prophets worked closely with the Dene communities. Their realm of authority within the Dene community was spiritual, however they also provided the communities with advice and, on occasion, laws to govern individual behaviour, relationship and family life. Specific laws on diet, dress code, relationship and land use were given for specific individuals and families.

According to Dene belief prophecy is a gift of the spirit. In the way of the Dene from the Deh Cho young men were put out to fast during the spring after they killed their first moose. People who fast know from that experience that no one can go for more than two days without food and water on their own will and spiritual strength. The people therefore recognize that anyone who goes beyond has done so with the help of spiritual beings. This spiritual quest continues throughout one's life. It is the responsibility of the individual to make a decision to put themselves into a pitiful state of being by fasting, and to supplicate with great sincerity so that the spirit will take pity and help. Over time this practice is rewarded with gifts from the spirit.

The gifts which the spirit has to choose from are as numerous as the expressions of the Creator's will in creation. Prophecy is one of them. But it is believed that in Dene society every individual was gifted. Not everyone accepted their gift. Not everyone developed their gift. Not everyone who did develop their gift used it exclusively for good. Indeed it is taught that some even used their gift more often to harm than to help. As in all societies there were good and evil people. As in all societies the

Dene preferred and strove for the good. They related to their gifts as blessings of the spirits gifted with the intention of helping the Dene enhance their life.

The gifts of the spirit were given with song, with word, with drum, with pipe, with stone, with water, with fire, with air, with animal, with plant, depending on the gift given and its purpose. Along with the gift the spirit gives the recipient a ceremony to conduct while using the gift. Some ceremonies are as short and quick as the flight of thought. Other ceremonies take several days and many people to accomplish. The physical manifestations of the gifts of the spirit are wrapped and tied up and kept in a safe place while not being used in ceremony. The bundle is to be cared for as a new born child.

People who receive these gifts are commonly referred to as medicine people. Many people had one or two gifts which they could use for a specific purpose. A few people were gifted with authority over all the other medicine people. Their knowledge and abilities were very extensive. They worked on themselves and became so powerful in their own right that they would teach others and work with their own spirit helpers to authorize those they gifted with the right to lead their people in prayer, and to carry a bundle for them.

There were many keepers of such bundles among the Dene during the years up to and beyond the signing of the Treaty in 1921. These bundle keepers are the spiritual leaders of the Dene. They lead the people in prayer according the rite of the ceremony given them. They do not advertise their work. The protocol which they and their people follow is given with the gift. Some were given authority to celebrate only within their own family. Others oversaw a specific area. The most powerful oversaw the whole territory.

The gift is very sacred. It is of the spirit and brings life, protection, direction and guidance to the people. As people we enter into relationship with the spirit with free will and work to maintain free will just as we do in relationship with other people. But we also recognize that it is the knowledge and ability of the spirit who works through the bundle carrier who is healing or teaching or giving direction to be followed. The Dene are not a head strong people when it comes to relationship with the spirit. Obedience is fundamental in the relationship. This is not to be understood as subservience. The process of establishing and maintaining relationship is a normal one but like all relationships it is a life long one and can be very difficult at times. It begins with contact, exchange or sharing of concern and knowledge, testing to build trust and eventually mutual love. There is communication, agreement and action on the part of the carrier and the spirit. In this way ceremony is carried out and the community receives what it needs to survive.

Some years after Treaty was made with the Crown in 1921 something happened among the Dene in the Mackenzie Valley. Many of the Dene bundle carriers died within a two week period. It happened so fast that the carriers did not have time to transfer the bundles. Their families were forced to return the bundles to the

land.

There are three sources of information which may be related to the event:

a. Henry Ekali of Jean Marie River, an elder who is now over one hundred years old, was advised by James Antoine, MLA for Nahendeh, of bundle opening ceremonies which he witnessed among the Bloods in Southern Alberta. James asked Henry if the Dene had bundles before. Henry answered yes and went on to say that he was not sure what happened but at some time in the 1920's they died within a two week period and their families had to give the bundles back to the land."

b. In 1928 The Hudson's Bay Company resupply boat Distributor made its maiden voyage down the MacKenzie River. From Hay River to the Delta "...red gift blankets were given to the elders and leaders. Everyone who slept with those blankets died within two weeks."

"The influenza killed two hundred people in my agency, and as many along the Mackenzie River. All in three weeks. It left all...weak without resistance, more predisposed than ever to pneumonia and other lung diseases."<sup>10</sup>

c. "In 1925, the Dene at Deline lived peacefully, working to survive. They hunted, fished and trapped during the winter, but in summer they were very poor. ... Not all the Sahtu Dene were good trappers, and some had a hard time paying their debts to the agent. But the traders often gave these trappers credit against the next winter's trapping season. Some traders had travelling agents who followed the trappers into the bush, to trade goods for fur.

A Dene named Salie was an especially good businessman. ...he became a travelling agent for the [Hudson's Bay] Company. Salie was a bit rough on his own people, but he gave a little credit out in the summer of 1926.

... When the spring hunt [1927] was over, Salie went around [Bear Lake] to collect the debts people owed him before going down to Tulit'a [Fort Norman] to see his boss.

One old man named Onzie had a tough time during the winter. Onzie was known as a strong medicine man, but he caused no trouble among the people. His daughter had been sick all winter and Onzie had been unable to trap, because he stayed at home with her. When Salie went there to collect the \$60 Onzie owed him, Onzie tried to explain that he had no fur to pay his debt.

'I have only three beaver skins for the whole summer, and I cannot give them away,' he told Salie. 'I will pay this debt next winter.' But Salie was rough on the old man. 'You have to give the three beaver pelts to me,' he insisted.

'Look, I am an old man,' Onzie replied. 'Take it easy on me. If you want money so bad, I have seven good dogs. You could pick the two best dogs and sell them, and that would pay my debt.' But Salie wasn't satisfied. 'I don't want your dogs, I want fur,' he said angrily. 'People say you are a strong medicine man, and they are scared of you. But I am not scared of you, I have medicine too, and I could just take these three beaver pelts away from you if I wanted to.'

For a long time Onzie did not speak. Then he said, 'My son, don't say that. Don't talk about medicine. You are the lowest one to talk about medicine power. When a great medicine man is angry, his medicine gets angry too.' He glared at Salie. 'I will not give you my three beaver pelts or my two dogs. Where you're going you won't need beaver skins or dogs. Get out of my tent. I don't want to see you again.'

People passing outside the tent heard this quarrel. When anyone quarrelled with Onzie, something always happened, so the people wondered what would happen this time. There was fearful talk all summer about it. The people knew that strong medicine power is sometimes very dangerous.

It was spring when the two quarrelled. By November Salie was dead. People die all the time anyway, and life goes on. But this person's death was special because of the circumstances of the quarrel, and people talked about it all winter. Salie came from Radeli Ko [Fort Good Hope] where he had relatives. ... People [there] must have talked about this death too. Winter came and then it was 1928.

That spring Paul Blondin and his son Edward were hunting beaver and muskrat. One day it rained so hard they were getting soaked. 'My boy,' said Paul, 'maybe we should camp. There's no use working in this rain.' They were in flooded willow area. They looked for dry land, paddling until they found a small island under a tall tree. After skinning whatever beaver and muskrat they had, the two went to sleep.

Edward woke up later and saw his father sitting by the fire. 'What's the matter Dad?' he asked, 'Can't you sleep?'

'I have had a vision,' Paul replied. 'Drink some tea, and I'll tell you about it.'

Paul started to explain the vision to Edward. 'Eagle is my best medicine. He always helps me when I have a problem. I think we are sleeping under an eagle nest. From the nest on the top of this tree, the eagle spoke to me and it was not good news. That's why I am worried and can't sleep.'

Paul drank some tea and continued. 'In my vision I saw two strong medicine people fighting each other with



powerful medicine. They killed each other with their medicine. Not only that, but they were so strong that they took lot of weaker medicine people with them. I was in trouble too. I was one of those to lose my life in this conflict of strong medicine power. I begged the eagle to save me, as he used to do. But the eagle was helpless against this strong medicine.

'So I worried about you my son. I told this to the eagle, and he says you will survive the conflict of medicine power. I was glad about you, but it looks as if I will lose my life this summer. My boy, let's go home.'

Paul spoke to all the medicine people there, to learn if they had seen anything. If they had, maybe something could be done about it. But no one had seen anything unusual. ... They didn't believe what Paul Blondin was saying, that a great disaster would befall many medicine people.

Nobody believed Paul because life seemed completely normal. Everybody got together and had a lot of fun, with drum dances and handgames. And soon everybody would go to Tulit'a [Fort Norman] to sell their fur. All the Deline people arrived at Tulit'a as did Dene from all directions of Denendeh. Tulit'a was important in those days, because two trading companies had their posts there, serving a large area.

Dene from far-flung villages were very happy to see one another, and a big feast was in order. The people contributed the best food they had: fresh meat, dry meat, fat and pounded meat, fresh fish and bannock. When the meal was ready, the people gathered together. A leader started a long speech before the meal, and then another got up to speak. When the leaders had all finished with their speeches, it seemed as if the meal was finally about to start. Then, at one end of the crowd, a ragged old man stood up.

'Let me speak!' he shouted. 'I want to say something.' The Chief said, 'Identify yourself and we will listen to what you have to say.'

'My name is Polee,' the stranger said. 'And I come from below Radeli Ko. This is the first time I've seen Tulit'a, but I am a man who doesn't talk behind any man's back. I want everybody to hear what I have to say.' He drew himself up. 'Last fall, my son died at Deline. His name was Salie. I heard through the moccasin telegraph that a certain man killed my son with medicine. When I heard that, I wanted to find the man, to learn if this was true. As soon as the ice was gone on Dehcho [Mackenzie River], my wife and I travelled up the river, pulling a canoe with a line. We arrived here just in time for this feast.'

The speaker paused. Then he asked, 'Is there anybody by the name of Onzie in the crowd?' Onzie was a



powerful medicine man who had no fear of anyone. Calmly, he stood up, 'My name is Onzie. What's on your mind?' Polee looked sharply at him. 'Is it true you killed my son with your medicine? I want to hear it from your lips.'

'Yes,' Onzie replied, 'I did it.' But he pointed his finger at Polee, 'You are responsible for your son's death, because you raised him in a bad manner. Your son had a bad temper, and behaved badly, so he talked himself into the grave. You are responsible for it.'

When Onzie said that Polee got really angry. When medicine people are angry, their medicine gets angry too. Polee had lost his son and this man was making a fool of him in front of a big crowd. 'If you want to kill people why don't you try to kill one now?' he shouted at Onzie. 'I promise you will die first.'

'If I do, I will take a lot of medicine people with me,' Onzie answered.

People started telling the two of them to stop. But Polee and Onzie could not stop yelling at each other. Finally, the chief looked for other medicine people to stop them, and they managed to end the quarrel. By this time people were crying instead of being happy. They recognized the dangers of medicine power conflicts. Nobody felt like eating any more...

There was something bad in the air.

Paul Blondin spoke to his friends, saying he had foreseen this state of affairs the previous month. 'But the power is too strong,' he said, 'There's nothing we can do.'

For three days nothing happened. On the fourth day, Onzie fell sick and died the same day. The next day Polee died. From then on people died every day for a whole month. Over half the people who went to Tulit'a to sell their furs that year never got back home.

Paul Blondin died too. He foresaw this, but the power was too strong for him.

The Dene were never the same afterward. They lost almost all their strong medicine people, not only those in Tulit'a. The same thing happened in every community in Denendeh, as a great number of elders died, most of them medicine people. From then on life was hard for the Dene. New diseases came into the country from the South. There were no medical services yet, although the government had promised the Dene that they would help them. People died of diseases from the South, but help only came much later."

Today many elders say that it would not be possible to live the old way in this part of the earth without the gifts which their ancestors enjoyed. The young are encouraged to go back to the land. It is while living and sleeping on the land that the gifts of the spirit are received.

The Dene have come through a brief period in history (about 65 years) with very few spiritual leaders. In the past ten years this has begun to turn around.

Although the Dene laws have not been written down they are still a major force at work in the lives of Dene today. At the time of Treaty 11 they were still in full force in Dene society. A greater knowledge and understanding of those laws would provide the Commission with a clearer understanding of the constraints, rights, responsibilities and authority with which the Dene leadership negotiated Treaty. We will come back to this from the perspective of the social and political order of Dene society.

According to our beliefs, the spirit and the land are the boss of Dene life. At the time Treaty 11 was signed Dene culture was still intact in its social, political, and spiritual manifestations. Our leaders of the day were bound by the social norms, the beliefs and customs of a culture which spanned more than ten thousand years.

The Land has to be obeyed. She provides all the necessities of life. The Dene are given the responsibility to continue to live with her in that part of her being which has generated the Dene way of life, to govern themselves at personal, family, regional and national levels in a manner which honour and respect her. This is fundamental to survival. To disrespect the spirit of the land is to disrespect life. It is to invite death. This belief extends to people, animals, and tools used to bring food and so life into the home.

The Dene have always recognized that the Creator provides life and the Dene way of life through the land the Dene inhabit. To give up the land is to give up life and culture which the Creator provides. In 1988 Mary Firth of Fort McPherson asked the writer to have lunch with her. We were in attendance at the Dene National Assembly in Hay River. The whole week was dedicated to discussing the Dene/Metis Agreement in Principle. Mary asked what I thought of the agreement. I told her I had not read it but from the discussions I felt uncomfortable with the concessions that were being demanded of the people. Mary said "For me, I am being asked to give up the life which our Creator has always provided us and to take a life which will be provided by the government of White people. They are not God."

Early in 1990 William Antoine spoke to his daughter Ethel Lamothe. He told her "I do not want the people to make a decision about the land before I die." She asked him: "Why do you say that?" He said: "I do not want to be among the ones who will have to tell our ancestors that we gave up the land they left in our care to the White people."

We believe that our very bodies are an intrinsic part of our land. At the leadership meeting of the Dene Nation in Fort Norman, February 1990, Dene elder Fred Andrew spoke to the leadership with tears running down his face. He said: "You cannot give up one clump of dirt. It is our blood."

## Deh Cho Dene Social Order

The family is the base of Dene society. A family is made up of three or four generations living together. Order is maintained by individuals conforming to their natural realms of responsibilities and rights. Nature is seen by the Dene to be divided between male and female realms. In the family both the males and the females have specific realms over which they have authority and jurisdiction. Even more specific to the realms of authority according to gender, the Dene also have personal areas of jurisdiction according to individual gifts.

The Dene socialization process is complex and extensive. It begins with the elders dreaming to observe the spirits who come and go in the presence of a pregnant woman. This is critical especially in the last week of gestation when the spirit to be born comes more often and stays longer. This process teaches the elders much about the knowledge and nature of the spirit to be born. This knowledge will be used in the education of the child.

Also during the gestation period the parents are taught to speak to the child. Every evening the father is encouraged to lay his head on his wife's womb and to tell his child what he has seen and done during the day, to sing to the child and to pray for the child's future. Because the mother is carrying the child in the seat of her emotions and spirit, the child knows what the mother knows. In this way the Dene begin a bonding process with their children long before they are born. A good spirit is a very gentle being who will shy away from a non-caring parent.

The educational process of the Dene has been discussed at some length in the paper: *Traditional Teaching Methods*, submitted to the Royal Commission. I would encourage the reader to take the time to read that paper while considering Dene social order. The fundamentals of Dene education took place within the family. However at least once a year the families of a region would gather after spring hunt. At that time they would visit and share food with each other. Families would make marriage contracts for their new born children. The elders of the families would sit together to review the past year and plan the year ahead. They would also put young men out to fast. Families which had made marriage contracts for their children would provide for those young people who were ready to consummate their marriages. Story tellers would gather people together and teach them their legends. The people would celebrate together. (See Appendix "B")

Through dreaming elders would identify individuals with gifts which needed to be developed. The individuals were tested through ceremony such as fasting and through "games" which were used to both strengthen the individual and balance their medicine. These individuals were given the option to pursue more strenuous training to develop their gifts. On occasion this required that a young person travel from teacher to teacher to acquire the full training needed to develop to their full potential.

## Political Order

The political order is also based on the gifts and the division of responsibility within the social order.

Generally the male realm is the land and the female realm is the household. However survival needs come to bear as well so that women are taught to hunt and men are taught to cook and sew.

It is believed that the earth is female and that women are much more in tune with her, making it easier for the earth to communicate with women. For that belief, and other reasons such as the belief that the earth is one of the major law givers, it is commonly understood among the Dene that women are, in general, more knowledgeable and powerful in the ways of the spirit than men. Dene law is accepted as a gift of the spirit to provide the people with a good life. Dene women are seen to have easier access to the source of life and the law than men. It is the accepted order of Dene life that the women are the keepers of the law.

Since it is seen that a woman is made to receive life (both physically and spiritually) and life is so precious and sacred, it is the practice for men to stand in front of their women to protect them. Man is made to transmit and protect life. In this way men take on the role of the public administration of the law. Women accept this but retain the right to intervene if need be. This natural check and balance system has served the Dene well.

If a problem came up for one family which they could not solve on their own they would take it to their relatives for help. If need be the problem was brought to the gathering of families. Examples of problems handled at the level of the gathering of families are:

- Healing of family relationships.
- Marriage contracts.
- Divorce
- Protection of Territory, and
- Assignment of Territory to new families.

Oral Dene history speaks of alliances which extended to over vast areas. The Dogrib, South Slavey, Chipewyan, Beaver and Kaska peoples were allied against the Cree in the late 1700's.<sup>12</sup> Although they defeated the Cree they gave them the land South and East of the Peace River in what is now Alberta because the Cree explained to the Dene that the Buffalo had left the plains and smallpox had spread among the people in the South.<sup>13</sup>

## Governance of Resources

Dene culture thrived on the economic activity of harvesting renewable resources. The source of the resource is the spirit. There are laws governing human behaviour to ensure continued supply. These laws acknowledge that all life as we know it is gifted to those who live right. Living right involves first of all respect for all manifestations of life, obedience to ones parents



and elders, hard work to earn ones keep, sharing what one has whenever asked, and praying for all of creation. These beliefs, were acquired in the Dene culture through experience and the teaching of spirit. They are taught to new generations by their own experiences and the words of elders. When put into practice these beliefs reciprocate the creative process and assures the continued supply of resources. In other words the Dene believe that the Creator is still actively creating life and the Dene are an integral player in that creation when we live according to the laws which the Creator gives us to follow.

In the upper MacKenzie area each family has their own traditional land use territory. Within their territory the family has regular jurisdiction over the use of the land and waters. The family could and on occasion did move into a new territory providing they did not infringe on other families lands. Usually this is done through consultation with other families but survival needs carried where consultation was not possible. Formalized allocation and use of territory was planned by the elders and sanctioned at the annual gathering of families after Spring hunt. At the family level parents would plan together and assign work. Individual knowledge and skills were taken into account in the assignments so as to maximize return for the family.

There are main travelling trails to be used by anyone; family trails within family territories which tie into the main trails and individual trails within family areas. It is the law for Dene in the upper Mackenzie that they not use each others trails without permission.<sup>14</sup> For the Dogribs of the Rae Lakes area this restriction does not apply.<sup>15</sup>

During the annual gathering of the families the elders would review the past year and plan for the coming year. On occasion a family would ask for the help of a hunter in their territory. Another family might let it be known that they had too many people living in their area. The elders would discuss these problems and negotiate with the families involved to resolve the problems. The elders were the recognized authority to assign a family a new territory. They have been known to impose hunting restrictions on certain species. In this manner, elders in council, provided for the management of the lands and provided governance to their people.

### Protection of Territory

On occasion the Dene have had to go to war to defend their territory. "1783 Cree Indians at war against Beaver Indians."<sup>16</sup>

In 1972 the writer was teaching a cross cultural awareness course at the adult education centre in Grouard, Alberta. Willie Okemow, an elder of the Sucker Creek Reserve in Alberta spoke to the class. He told the story of his grandfather and great uncles who led the Cree into Dene territory. About five thousand people moved from the plains to avoid smallpox and because the buffalo were leaving. Willie said that about 700 warriors went ahead of the



Cree to push the Dene out and take over their lands for themselves.

In 1973 Mrs. Cecile Antoine from Fort Simpson spoke to the writer about the same events from the Dene perspective. She said that word came to the Dene that the Cree were fighting the Dene. Dene warriors from as far north as Wrigley, as far east as Fort Rae and west into the mountains of the Yukon began moving to fight the Cree. She said that in the first two battles the Cree won. But during the third battle the Dene won and pushed the Cree back across the Peace River.

Both Mrs. Antoine and Mr. Okemow said that after the third battle the Cree called for a talk. They met near Fort Vermilion Alberta. The Cree explained what was happening on the prairies. They spoke of the smallpox and their need to get away from it. They spoke of the buffalo leaving and of their need for land where they could survive. Although they won the war, the Dene gave the Cree their lands to the south and east of the Peace River. Together, the Dene and Cree accepted the river as the new boundary between their territories. They renamed the river calling it Peace River as the sign of the peace which they had negotiated.

The Dene also defended their territories from the Inuit and the Inuvialuit along the arctic coast. They continued to do so until early into the 1900's (Chief Freddie Greenland, 1981, 1993).

There are also stories about conflict between Dene groups. The Dogrib (Edzo) and Yellowknives (Akaitcho) finally made peace in the 1800's. The Dogrib teachings about the conflict, negotiations and resolution of peace take several days to tell.

These and other stories of the Dene make it abundantly clear that the Dene have a long history of defending their territory and negotiating settlements with each other and with other peoples.

#### Administration of Justice

Prior to 1928 and the significant changes in Dene society, there was a clear process through which the Dene maintained social order. This area, as in many other areas of Dene life, was taken care of primarily by prevention techniques. These included dreaming on the future year of each individual before spring. Prayer and ceremony according to each individual's needs as identified by dreaming. Discipline and education of the child was based on positive sanction even within the mother's womb. In that regard, the woman with child was held in great esteem by the family as she was considered sacred to the people during her pregnancy (Roy Fabien, 1993). It is believed that by caring for a woman with child and holding her in high esteem that the spirit of the child will grow to know, love and respect all of creation. In that way the person is one who looks on life and works with it in a just way.

There are stories, however, which teach that the above process did not always work. In such a situation near Fort Simpson, according to Leo Norwegian, a family was unable to convince one of their young woman to relate in a just way. They tolerated her for several months until the next gathering of families. The young

woman's parents and grandparents then raised their concern with the elders. The elders spent a couple days meeting with the relatives and friends of the young woman. They were reacquainting themselves with all the good that the young woman had brought to the people. They then gathered food and prepared to meet with the young woman. Very early the next morning they went to the young woman's camp, made fire and cooked for her. They then woke her and began a day of visiting to help her see the positive side of her self. They told her of the joy she had brought to her family and to the people at her birth. They went through the day telling her about all the good that they knew she had done. Towards the middle of the afternoon they asked her to consider the trouble she had caused her family and to re-member who she really was. They finished the day with her giving her praise for all the good she did. The woman's attitude towards her family changed from that day.

### Trade and Commerce

The Dene always traded. Dene history teaches that a family from west of Fort Norman was gifted to make tools of flint. (Albert Norwegian, 1978) Those families made tools and traded with other Dene from as far away as the Yukon river valley and the barren lands. It is more commonly known that a group of barren land people originally called Yellowknives and now referred to in English as Chipewyan made tools of copper which they traded with other Dene.

Fish, meat, hides, tools and knowledge were always traded. Today people prefer to call the activity sharing. However, the elders remember it as an economic activity too. It was the custom to work for an elder for days with the hope of hearing a story that would help a younger person see a way to live a better life.

### Collective and Individual Rights

In general, the Dene governed themselves with recognition and acceptance of the individual's right and responsibility to live according to the demands and needs of the gifts which the individual carried. It makes sense to a Dene to hear a statement to the effect: Who are you (other individual or government) to interfere in the intent of the Creator in this individual's role in creation?

It is in the context of mutual benefit to all individuals concerned that collective rights and responsibilities are exercised. In that context the individuals with the most skills and knowledge in the area of work needing to be done are recognized as the leaders and the rest of the collective defer to their judgements and decisions. A few examples of collective behaviour give insight to collective rights still exercised by the Dene.

1. The Hunt. This is the fundamental basis of Dene economic life. It is still conducted today much as it was in pre-

- contact days. The technology has changed, but the fundamental beliefs and social context remain unchanged.
2. Territorial Defence. There is no denying the negative impact which policies and funding strategies, of government and industry, have had on the dissolution of the Dene beliefs and political cohesion. However, the work of the Dene Nation in the past twenty years still speaks clearly about the Dene will and ability to function as a cohesive people in the work to defend their territory. Of necessity, the strategies are different from outright war. In the Dene mind the need to keep the peace, with the subjects of the Crown, is a sacred trust required by Treaty. This trust is honoured by the Dene in spite of the fact that many recognize that the psychological and financial strategies of church and government, especially through the schools, is a concerted war effort to displace the Dene from their lands and resources.<sup>17</sup> This trust is honoured by the Dene because it is believed that it is the ancestors who made this agreement in the face of the Creator and Dene living today have the responsibility to obey their elders both in this world and the next; the trust is honoured because it is necessary to do so to attain peaceful existence with one's ancestors in the next life.
  3. Sharing. Every Dene community still brings together foods from the land in community feasts where people gather to celebrate together. In the past these feasts were also occasions of gifting and trading. That process met the economic needs of the Dene in the past and fulfilled the same economic purposes that the European concepts of trade and commerce do. The gifting and trading part of the feasts is seldom seen today because the economic needs which it formerly filled are met differently. In the past sharing and gifting was based on human relationships, mutual respect and honour and the recognition of need. Today material needs are easily acquired for cash from a store. Today, on the surface, it appears that people who were originally dependent on each other for survival do not need each other as much. Where the convenience of money is eliminating material needs it is also affecting the social and spiritual needs of belonging. The economic and social constraints of life on The Land fostered self control in maintaining healthy relationships, mutual respect and honour. However, the spirit and intent of the community to come together to share and celebrate together is still very strong in Dene communities.

## THE TREATY MAKING CONTEXT

Thousands of years of history stood behind the Dene as the treaty party approached. Each of the Dene present were raised on the land with the history, their social organization, their religion, their understanding of the fundamental relationship between themselves and the land. Each knew from experience as children, parents and leaders that the land provides for those who respect her.

Dene history, recorded in memory, in stories, in place names, provided the experiences which teach identity and self worth, and give hope for the future.

The Dene stood in community, the government treaty party approached as a small group of strangers. They did not know the land. They did not know the people. They came with preconceived ideas about the "Indian" which did not meet the reality of Dene life. Yet, they came with the determination of an imperial power behind them and the apparent willingness to misrepresent their intentions to the Dene.

"That notwithstanding the language of Treaties 8 and 11 there is sufficient doubt on the facts that aboriginal Title was extinguished and therefore such claim for title should be permitted to be put forward by the Caveators."<sup>18</sup>

On November 27, 1937, Bishop Breynat signed an affidavit on the matter of the treaty signing. An excerpt of that affidavit reads as follows:

"I gave my word of honour that the promises made by the Royal Commissioner, "although they were not actually included in the Treaty" would be kept by the Crown... As the text of Treaty No. 8 & 11, which had been brought from Ottawa was not explicit enough to give satisfaction to the Indians, (emphasis is mine) who were afraid to be treated as the Indians in the Prairies had been treated, (the conditions of the North being altogether different), the following promises were made to the Indians by the Royal Commissioner, in the name of the Crown:

(a) They were promised that nothing would be done or allowed to interfere (emphasis is mine) with their way of living, as they were accustomed to and as their antecedents had done.

(b) The old and destitute would always be taken care of, their future existence would be carefully studied and provided for, every effort would be made to improve their living conditions .

(c) They were guaranteed that they would be protected, especially in their way of living as hunters and trappers, from white competition, they would not be prevented from hunting and fishing, as they had done, so as to enable them to earn their won (sic) living and maintain their existence."<sup>19</sup>

Similar affidavits were signed by the many other individuals. See



Appendix "C" for a list of the names which was submitted as exhibit number 55 in the Paulette case.

### Beliefs and Treaty

Given the social and historical context of the meetings between the Dene and the treaty party, it is difficult to believe, as Indian Affairs would have us do, that the Dene knowingly ceded their lands to the Crown. At that time, in the places where the treaty was signed, the Dene were the obvious power, the majority, and vast distances from any potential threat from the government.<sup>20</sup>

The facts that the Dene then and still believe that the land is the blood of the people; is the conscious being from which the Dene are called to learn the Creator's will; is the provider of Dene life; and, given the fact that the Dene still believe that the land and the people are one; that the land belongs to the Dene and the Dene belong to the land; and that a living relationship with the land is an inherent function of Dene religious beliefs, makes it inconceivable that the leadership in 1921, which held the same beliefs, would knowingly give up the land.

With all the changes that have taken place since 1921 in the life style and beliefs of the Dene, no Dene agrees that it is proper to give up The Land. Some regions in the North are doing so for economic and social reasons, hoping they can make a better life under a comprehensive agreement. The colonizing process they have lived has been painful. They hope this move will relieve the pain. Although indirect, that information is significant in understanding the kind of decision that leaders would have taken in 1921 if they had been asked to give up their lands.

It is from this historical perspective of the Dene that one will understand the Dene position with respect to Treaty 11. That is, the Dene agreed to allow the subjects of the Crown to live on Dene lands in peace and friendship, and that in return the Crown would provide certain benefits to the Dene. Some of those benefits are spelled out in the government's written version of the treaty, others are evident in the affidavits signed by witnesses to the treaty negotiations and oral testimony given by the Dene negotiators.

Emphasis was placed on the words "was not explicit enough" in the affidavit which Bishop Breynat signed. During a workshop on traditional leadership on the Hay River Reserve last winter Mr. Pat Buggins, an elder of that community brought a photocopy of the actual document which he said his grandfather signed in Fort Resolution in 1899. (See Appendix "D" for photocopy of same. The copy is reduced to accommodate this file.) It is interesting to note that the clause on cessions in Treaty 8 are referred to with the simple sentence "The signatories here below agree to the cessions made." Not too explicit. It is natural to relate to the above statement being read in a meeting to mean the oral cessions made during the meeting. Breynat claims the treaty was read, but he also claims that the terms were not specific enough to satisfy the



Dene. It would seem from Breynat's two statements that the only document read was the one which did not specify that the Dene were ceding all their rights and lands. The nature of the statement should also help the reader become more aware that cessions were made by both parties to the Treaty. These are spelled out in the version of Treaty 11 according to the Dene. A question which needs further research is raised by the above information: Did the Treaty 11 party carry a similarly unexplicit document? Mr. Buggins said every time his grandfather met Bishop Breynat after that, he confronted him and accused the Bishop of lying during the negotiations of Treaty 8.

Bishop Breynat states that the wording of both treaties 8 & 11 were not explicit enough to satisfy the Dene<sup>21</sup>; that they were presented in calligraphy on large parchments illuminated with gold and colours; and that they were not to be changed.

Selon les coutumes établies entre nations civilisées, un traité n'est rédigé, article par article, qu'au fur et à mesure des discussions qui en précisent les termes à la satisfaction des deux parties contractantes. ... Malheureusement on n'en a pas tenu compte pour la conclusion des traités No 8 et No 11. Il y a bien eu des discussions plus ou moins longues avec chaque bande intéressée, mais la formule à signer avait été rédigée à Ottawa *ne varietur*! Des artistes calligraphes en avaient copié le texte sur de grands parchemins avec enluminures en or et en couleur. ... En bon français, le traité n'était autre chose qu'un ultimatum!<sup>22</sup>

According to customs established between civilized nations, a treaty is drawn up, clause by clause, as the discussions which bring the terms to precision to the satisfaction of the two contracting parties. ... Unfortunately we did not hold to that for the conclusion of treaties 8 & 11. There were discussions, of varying lengths with each interested band, but the formula to be signed was formulated in writing in Ottawa not to be changed. Calligraphers had copied the text on large parchment, illuminated with gold and colours. ... In good french the treaty was nothing other than an ultimatum.

*Ne varietur* has to be highlighted here as well. At least one of the government's treaty commissioners admits in writing that the document they brought the Dene was not to be changed. This is clear evidence that the government did not authorize its commissioners to negotiate or promise the Dene anything.

## OVERVIEW OF GOVERNMENT AND CHURCH INTERESTS

### Government Interests in Denendeh

There is significant written historical evidence, spanning the five hundred years since Europeans have been travelling to the Americas, that the conflicts of belief, values and power in the cultures of Europe have and are being played out in the relationships between the Indian Nations on the one hand and the agents of Imperial powers and the Churches on the other. Some agents involved with Indians in the Americas have postulated concepts like Christian humanitarianism.

"En se rattachant a l'evangelisation comme a sa fin, la dialectique de Las Casas touche a la realite intime de la personne humaine: la nature de l'esprit, la liberte de l'esprit. Ici le sujet du droit apparait en ce point ou il transcende toutes les relations mais en manifestant sa relation ontologique a Dieu, son ouverture a l'Absolu. La personne est le sujet d'un impératif primordial: elle doit etre libre pour Dieu. Telle est la revendication fondamentale de tout le requisitoire de Las Casas."<sup>23</sup>

In attaching itself to evangelization as to its end, the dialectic of Las Casas touches the intimate reality of the human person: the nature of the spirit, the liberty of the spirit. Here the subject of rights appear in this point where they transcend all relationships but in manifesting their ontological relationship to God, their opening to the absolute. The human person is the subject of a primordial imperative: the person must be free for God. Such is the fundamental vindication of all of Las Casas' works (towards having Indian rights in the Americas protected by Church and Spain).

Others have countered with capitalism coloured by racism.

"The Indians and the Metis of the Northwest will be held down with a firm hand until the country is overrun, owned and operated by White settlers."<sup>24</sup>

Others take the position of the need for clear sovereignty of the Crown over Indian Lands.

"Large parts of Canada continue to be used by aboriginal groups (note: not peoples) living in their traditional territories. The basis for any comprehensive land claims policy, therefore, is self-evident. It is the fulfilment of the treaty process through the conclusion of land claims agreements with aboriginal groups that continue to use and occupy traditional lands and whose aboriginal title has not been dealt with by treaty or superseded by law. ... In this process the claimant group will receive defined rights, compensation and other benefits in exchange for relinquishing rights relating to the title claimed over all or part of the land in question."<sup>25</sup>

It is useful to review these factors which influenced the King of England and future governments, in North America, in their dealings with the Indians, to better understand the pressure points affecting the decisions that were taken as well as the way those decisions were taken.

"At the time of the era of discovery, from the early part

of the fourteenth century, it was generally accepted that the entire globe was the property of God and, as such, distributable by the Pope as His delegate on earth. At the same time, it was the practice of the European states to seize for themselves territories which had not yet been claimed by other Christian states, regardless of the attitude or presence of aboriginal inhabitants, who, for the most part, were described as "savages" or "barbarians". Many of these seizures were based on a series of Papal Bulls.<sup>26</sup>

"The Holy See did in fact try to mitigate some of the evil consequences of the European occupation of the American continent. Thus, by the Bull *Sublimis deus sic dilexit* of 1537, Paul III decreed that Amerindians were not to be treated as dumb brutes created for our service... and a century later Urban VIII found it necessary to threaten excommunication for those who deprived Amerindians of their liberty or property. However, these Bulls did not relate to the territorial property of the Amerindians. In any case, they carried no validity or threat to non-Catholics, and in 1609 in *A Good Speed to Virginia* we find it clearly stated that it is likely true that these savages have no particular property or parcell of that country, but only a generall residence there as wild beasts have in the forests.<sup>27</sup>

The above quotations are given to highlight the two main influencing beliefs which pressured governments and the decisions they took. While the spiritual and political leaders of Europe tended towards the more human in their statements, they also placed men into positions of power in North America whose beliefs fostered hatred and war.

"Could it not be contrived to send the Small Pox among those disaffected tribes of Indians? We must on this occasion use every stratagem in our power to reduce them. ... You will do well to try to inoculate the Indians by means of blankets, as well as to try every other method that can serve to extirpate this execrable race."<sup>28</sup>

"It appears from a letter of Capt. Bouyer that the smallpox had later broken out at Fort Pitt, which would have favored the execution of the plan. We hear nothing more of it; but, in the following spring, Gershom Hicks, who had been among the Indians, reported at Fort Pitt that the smallpox had been raging for some time among them,..."<sup>29</sup>

When the papers of General Sheridan, Secretary of the Interior with the government of United States, were opened, it was learned that he too had ordered that disease be spread among the Indians of the plains. His politic was continued until the early 1830's.

It was within that philosophical environment that the King of England issued the Royal Proclamation of 1763.

It is generally understood that the Royal Proclamation of 1763 is the instrument which required that Colonial Administrations

enter into treaty with Indian nations. The language of the Proclamation is couched in the usual style of European royalty. That is to say it reflects a certain underlying belief that the Pope and God blessed the Royal person with ownership and jurisdiction over all lands which an explorer, commissioned by the Royal person, might see.

"The Proclamation has been described as the Indian Bill of Rights, but this description in fact neither accords with the language nor the application and interpretation of the Proclamation. Moreover, since the Proclamation is a purely internal document issued by the Crown, it has no significance whatever in the eyes of international law, while its terminology makes it perfectly clear that it regulates the relations between Indians and private individuals, and is not concerned any rights which the Indians might claim against the Crown itself."<sup>30</sup>

However the Royal Proclamation of 1763 may be interpreted within the context of international law, it appears clear enough in the constriction it places on the Crown's subjects (the colonial administration of Canada as well as individuals).

...that no Governor or Commander in Chief in any of our colonies of Quebec, East Florida or West Florida, presume upon any pretence whatsoever to grant warrants of Survey or pass any Patents for Lands beyond the bounds of their respective Governments as described in their Commissions; as also that no Governor or any Commander in Chief of any of Our other Colonies or Plantations in America do presume for the present and until Our further pleasure be known, to grant warrants of Survey or Patents for any Lands beyond the head or sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which not having been ceded to or purchased by Us (my emphasis) as aforesaid, are reserved to the said Indians...<sup>n 31</sup>

Adding to the conflicting beliefs among the Europeans seeking to colonize North America was/is the interests of merchants. The following example speaks of the British merchants applying pressure to be governed according to British rather than French law in Quebec. It is presented here as evidence that British merchants were not prepared to accept to be governed by laws other than those of England. It appears by lack of evidence that Indian laws were not even a consideration.

We humbly beg leave to represent, that many of us have, through a confidence in the said royal proclamation, and other instruments ... ventured to send considerable quantities of merchandise into the said province, and to give large credits to divers persons residing in the same, both of his majesty's new Canadian subjects, and of his antient (sic) British subjects, who have, through a like confidence in the said proclamation, resorted to, and settled themselves in, the said province. And that we have employed our property and credit in this manner, in



a firm belief, that we should have the remedies allowed us by the laws of England for the security and recovery of it; ..."<sup>32</sup>

The French in Quebec had a voice in European forums and their concerns were given consideration even after conquest by the British.<sup>33</sup> Indians did not have a forum in Europe providing the British colonial power with the option of impressing their "beneficence" (i.e. the common European see, as ultimate good, that the rest of world should be as civilized; made to live as Europeans do) towards the Indians on their own populations at home while implementing military strategy and administrative policies which had the result of denying Indian laws, rights or responsibilities.

These conflicting beliefs and values are still being played out today where Indians are concerned. It is evident that Canada still does not recognize the legitimacy of Indians laws on Indian lands.

While the King would appear, in the Royal Proclamation of 1763, to be asserting a right on his part to have dominion over Indian lands by the clause: "reserved to the said Indians..."<sup>34</sup>, it is not considered to have any consequence by the Indians who always maintained their societies based on their laws and considered such statements by European monarchs as being without validity.

"Le pape devoit être très liberal de ce qui appartenoit à autrui...puisqu'il donnoit ce qui n'étoit pas sien; et que le Roi étoit quelque pauvre homme, puisqu'il demandoit."<sup>35</sup>

The Pope must be very liberal with what belongs to others ... since he gives away what is not his; and that the King was some poor man, since he demanded it.

"The lands described on the map on Treaties 8 and 11 belongs to the Indians of the Northwest Territories."<sup>36</sup>

"There was a three day meeting but, as far as I know, the land and the country never was sold or surrendered to the white man."<sup>37</sup>

Although some individuals working over the years within the colonial administrations and the federal bureaucracy have been supportive of Indian rights, overall government policies have been designed to ensure the sovereignty of the Crown over Indian lands.

The impact of these policies have been felt no less by the Dene than by the other Indian peoples in Canada. In fact, the Statement of the Government of Canada on Indian Policy 1969 has been fully implemented in the Northwest Territories.<sup>38</sup> Although much of the philosophy stated in the 1969 White Paper sounds good, the government missed and still misses today the fundamental significance of the Treaties for Indians. The agents of the Crown perceive Treaty as a benefit to the Indians costing the Crown too much money in exchange for the lands and resources of the Indians.

"The Nielsen Task Force made many recommendations on how to cut costs in Indian programs. This has resulted in many unilateral policy changes at DIAND, and many more subtle shifts designed to cut costs and off-load



obligations.

At the same time, senior appointments in the bureaucracy have been characterized by a parade of dictatorial and anti-Indian personalities... Their role is to be the hatchet men to carry out Cabinet directives. Some examples of these directives follow:

1. Dump Trust and Treaty Obligations
  - LRT Review: get bands to take over federal responsibilities and liabilities.
  - Community-Based Self-Government: get bands to accept limited, delegated authority without any guarantees on the resources needed to make it work.
  - Comprehensive Claims: Extinguishment of Aboriginal title and rights in return for some land and some benefits.
  - Specific Claims: ... only applies to the treaty issues that Canada wants to deal with.
2. Reduce Current Expenditures and Program Responsibilities
3. Integration under Provincial/Municipal/Territorial Jurisdiction. "39

The Indians perceive of the Treaty as a peace agreement and an agreement with the Crown to allow subjects of the Crown to live on Dene lands in exchange for certain benefits. The Treaty is held by the Dene as a sacred trust given before and witnessed by the Creator. Perhaps because of the misunderstanding created by those two differing views of treaty, more than any other factor, the agents of the Crown have been unable to meet the mind of the Dene. It is their beliefs and governing methods which provided government agents with the concepts which they have used to deal with "The Indian Problem". One example is seen in the 69 White Paper on Indian Policy.

The 69 White Paper would eliminate the treaty relationship between the Crown and the Indians; it would result in reserves becoming municipalities under Provincial jurisdictions. The government of the Northwest Territories receives the funds for services such as schools, hospitals, housing, social well being, and economic development which the Treasury Board allocates to meet Treaty 11 obligations. The government of the Northwest Territories does not recognize Band Councils as legitimate governing bodies. To receive funding from the GNWT Band Councils in the NWT must form and register societies under the GNWT Societies Ordinance. Even the only occupied organized Indian Reserve in the Northwest Territories, at Hay River, does not receive its' funds from Indian Affairs. The Territorial Department of Municipal and Community Affairs (MACA) funds the Hay River Reserve. However the Chief and Council of the Reserve have been advised by MACA officials that because the Reserve is not a community incorporated under GNWT ordinance the funds they get are merely a gift extended by MACA. The funds are not secure and are extended only when the ministry is able.

By ignoring the Treaty and administering Indian Financial Resources the government of the Northwest Territories pushes

another generation of Dene further into political relationships which alienate Dene rights to lands and self government and creates a reality which forces Dene to leave The Land without the skills and resources to survive in the White world.

There have been significant changes in Dene society over the past two generations resulting from problems internal to Dene culture but more emphatically from deliberate social engineering on the part of the government of Canada. In taking control, by force when necessary, of the education of Dene children<sup>40</sup>, and control over the administration of lands and resources<sup>41</sup>, the government has effectively neutralized the authority of the Dene elders and leaders. This has resulted in the dissolution of the social, political and economic order of Dene culture.

#### A Specific Case

Clause 4. of the Canadian Act Respecting Public Lands, 1906, states: None of the provisions of this Act shall apply to territory the Indian title to which is not extinguished.

In 1908 the Act was changed. At least two acts replaced the Act Respecting Public Lands, neither of which carried Clause 4. quoted above. The new acts are worded on the assumption that the federal government has sovereign powers over all lands in what they call the Dominion of Canada. However, for the Dene, that fact bears no more legal weight than the claim of a thief to ownership of stolen property. That any foreign government should Act to dispossess another people of their lands and rights does not meet with Dene common sense, fair play, honesty, moral or legal responsibilities.

It is evident from the documentation reviewed that there were polarized and differing views held of the Dene by various agents within government. There is evidence to support that the factors motivating non-Dene interests were humanitarian, religious, political and commercial. It is of course necessary to state that in this context for the religious, political and commercial interests to become reality for the non-Dene the Dene had to be displaced. For example:

"Re Lot 3, Fort Simpson

When the surveyor was making the survey of the above mentioned settlement he found some Indians on Lot 5, the property of the Hudson's Bay Company, and which has been patented to that Company, and he advised them to locate on Lot 3 and suggests the reservation of this lot for these Indians.

Under the arrangement arrived at with the Deputy Superintendent General of Indian Affairs, I would recommend the reservation of this lot No. 3 for these Indians during their occupancy of the same (My emphasis).<sup>42</sup>

It is clear from the above memorandum and several other similar documents that the government of Canada was acting to

displace Indians even before they made treaty with them. The language used by the officials of the department of the interior refer quite consistently to the Indians as squatters thereby denying them any legal status within their own lands. The agents of the government did not make any legal distinction between the "Indians" and subjects of the Crown where lands were concerned; that is everyone was considered a squatter until the government recognized their ownership of the lands they occupied. The Churches and/or corporations were recognized individually, the lands allocated for Indians were not issued to individuals.

"The provisions of the Deed of Surrender do not apply to other posts than the five mentioned above: at other places, the Hudson's Bay Company are ordinary squatters and have no more rights than other squatters."<sup>43</sup>

The words of S.D. Fawcett, the surveyor for the Department of the Interior, are more telling about the attitude and management practices of government officials towards the Dene.

"Sir:- I have the honour to report that during the latter part of February and beginning of March we surveyed an Indian Reserve Lot, for the Indians about Fort Simpson, some three miles up the Liard River from Simpson Island, which we did at the request of Mr. T.W. Harris, Indian Agent. This lot contains four hundred and ninety five acres, which Mr. Harris thought would be sufficient for their wants, and is laid out where he desired. (my emphasis)"<sup>44</sup>

According to Mr. Fawcett there were "50 [people living] Four miles up the Liard from Simpson".<sup>45</sup>

The survey of the whole island on which Fort Simpson is still located was completed by Mr. S.D. Fawcett 5th March, 1914. The survey provided for roads and lots of various sizes. The map of the survey records the following names associated with various lots: the Hudson's Bay Company, the English Church Mission, R.C. Mission, Royal North West Mounted Police, Northern Trading Company and the Indian Agency. A memorandum from the Acting Controller, Department of the Interior addressed to W.W. Cory, Deputy Minister of the Interior substantiates two things: that the government was disposing of lands to private applicants and that these actions were sanctioned by Order in Council.

"Under the provisions of the Order in Council passed on the 14th July, 1919, the Minister was authorized to dispose of lots in the different northern settlements to the respective applicants therefor without such lots having been previously inspected and valued, at a rate not less than \$3.00 an acre..."<sup>46</sup>

The above clause was written into several memoranda seeking authorization to sell lots of various sizes in Fort Simpson.

| <u>Lot Number</u> | <u>Area in Acres</u> |
|-------------------|----------------------|
| 31                | 12.4                 |
| 13                | 2.27                 |

|    |       |
|----|-------|
| 28 | 20.80 |
| 26 | 30.30 |
| 27 | 12    |
| 29 | 19.20 |

It is evident from the above that the government of Canada had instituted a clear process to alienate Dene lands well before they entered into treaty with them. Both the above process and the following statement give some evidence that government agents did not relate to the Indians as they did to non-Indian applicants for lands.

"In connection with the lots claimed by the Indians, an arrangement was arrived at between the Deputy Minister of this Department and the Deputy Superintendent-General of Indian Affairs that the rights of the Indians would be sufficiently safeguarded by a notation in our records that the lots claimed by them are reserved for them during their occupancy thereof. It should, therefore, be ascertained if these Indians are in occupancy of the lots."<sup>47</sup>

There is further evidence that the government of Canada actually proceeded with land transactions on Dene lands prior to making treaty with them. The Clerk of the Privy Council wrote the following "Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 4th January 1918.

"The Committee of the Privy Council have had before them a report, dated 13th December, 1917, from the Minister of the Interior, stating that the Department of Indian Affairs has applied for the setting apart of lots numbered 20, 22, 23, and 25 of Fort Simpson Settlement in the Northwest Territories, for Indian Agency purposes.

The said lots which comprise an area of 88.80 acres are available according to the records of the Department of the Interior.

The Minister, therefore, recommends that the said lots be transferred to the Department of Indian Affairs for Indian Agency purposes.

The lots above mentioned may be described as lot No 20, containing an area of 20.80 acres, lot No 22, containing an area of 24 acres, lot No 24, containing an area of 27.20 acres and lot No 25 containing an area of 16.80 acres, as shown upon a map or plan of survey of the said Settlement approved and confirmed at Ottawa, on the 28th day of May, A.D. 1915, by Edouard Deville, Surveyor General of Dominion Lands and of record in the Department of the Interior.

The Committee submit the same for approval."<sup>48</sup>

Up to and including the year 1920, the government acted on Dene lands, as a sovereign power would on their own lands, to meet the needs of settlers from Canada. At the same time, they also acted in a manner designed to keep the Indians calm.

"I may explain that the region referred to, that is



to say, between Great Slave Lake down the MacKenzie to Fort Good Hope has not been covered by any treaty but it is considered to be very desirable in order to secure the goodwill of the Indians and to avoid friction that at least all the lands near the settlements to which the Indians are entitled or are necessary for their reasonable wants, should be secured to them by having them regularly surveyed in the same manner as the remainder of the settlements."

Although some government agents, Mr. Conroy in particular, did try on several occasions to convince the government to enter into treaty with the Dene of the MacKenzie Valley for what they considered to be humanitarian reasons, the requests were consistently blocked. It appears that there was never any consideration by the Government of Canada to even entertain a treaty with the Dene north of 60 until oil was discovered at Norman Wells.

"It was on Indian territory, still unsundered by any treaty, that the first gusher at Norman Wells came in on August 25, 1920, revealing the underground treasure of the Northwest Territories. ... The oil strike caused much excitement among speculators and prospectors across the country. Canadian newspapers described the event with superlatives: "Biggest Oil Field in the World"<sup>50</sup>

Still today, as seen in the quote above from the current comprehensive land claims policy, the government of Canada is determined to acquire sovereignty over Dene lands. During the past two years there have been numerous reports in the newspapers published in Yellowknife about the exploration for diamonds. The headlines are not different than they were in 1920. The finds are referred to as the biggest in North America. Language to excite the investors and government objectives still go hand in hand. They haven't changed.

#### Church Interests in Denendeh

It is certain, at least to people who live in the north, that the Church missionaries in the north have a strong belief in the need to civilize and Christianize the Dene. It is necessary to understand what the Church means by civilization and Christianity to understand the kinds of decisions they took. This is a difficult task to accomplish as the Church is such a vast institution and many individuals within her hold to different values about civilization and Christianity. The purpose of this paper is to understand what happened during the negotiations of Treaty 11. Bishop Breynat played an active role in the process. He lobbied government from as early as 1909 to make a Treaty with the Dene of the MacKenzie valley. He acted as a Commissioner at the invitation of the government. But, he was also the successor, as Bishop of Bishop Grandin and Bishop Taché. Their perceptions of the Dene influenced Breynat. Bishop Taché, for example had some very clear



concepts about the spirituality of the Dene:

"Nos Montagnais, ... , avaient une connaissance de Dieu pure de ce mélange grossier d'absurdités que l'on rencontre dans les peuples les plus éclairés de l'antiquité."<sup>51</sup>

Our Chipewyan (Dene), ... had a knowledge of God which was pure of the gross mix of absurdities that one encounters among the most enlightened peoples of antiquity.

The above observation speaks of a spiritual reality within which the Dene live. For the European, however, it appears that a people are only civilized if their history is identifiable through the evidence of long lasting architectural structures<sup>52</sup>. The power and beauty of Dene language which early missionaries knew did not affect their perspective on the Dene as savages. In their own society the French used the following saying quite commonly, implying that if you did not speak French you could not be Catholic.

"Si tu perde ta langue tu perde la foi."<sup>53</sup>

"If you loose your language you loose the faith."

Perhaps the belief and perspective such a statement would require is the basis for Bishop Grandin recommending that the Dene children be not allowed to speak their language.

In April, 1872, Bishop Grandin had come to the conclusion that it was not possible to civilize the Indian people as long as they continued to live on the land. He decided that to succeed in their mission the Church would have to get control of the Indian children. To do so the Church needed the support of the government.

"J'ai remarqué, en France, l'Oeuvre des écoles d'Orient. C'est une association spéciale, qui opère un si grand bien, dans ce pay. Il nous faudrait une Oeuvre de ce genre en faveur des écoles du Nord-Ouest. ... Cette Oeuvre ... pourrait être un des plus puissants moyens, tout en conservant les races sauvages, de les civiliser,

...<sup>54</sup>  
I noticed, in France, the work of the schools of the Orient. It is a special association which accomplishes such a great good in that country. We need an undertaking of that kind in favor of the schools of the Northwest. ... This work ... could be one of the most powerful means, while conserving the savage races, of civilizing them, ...

In 1878 he wrote the following in a letter to a lady who had offered to raise support for his missions:

"Après avoir passé près de vingt-trois années de ma vie parmi les sauvages ... au Canada, j'ai pu me convaincre que l'on peut faire de nos pauvres Indiens de bons Chrétiens, mais qu'on ne parviendra à les civiliser suffisamment pour en faire de bons citoyens qu'en les prenant tout petits-enfants. ... Le Gouvernement Canadien qui semble prendre à coeur la civilisation des sauvages a bien voulu promulguer une loi, qui nous est d'un grand secours dans cette Oeuvre (sic) importante; elle donne à quiconque adopte un enfant abandonné le droit du Père sur cet enfant..."<sup>55</sup>

After having spent close to twenty three years of my life among the savages ... in Canada, I have been able to convince myself that we can make our poor Indians good christians, but that we will only come to civilize them sufficiently to make good citizens of them by taking them as very little children. ... The Canadian government which seems to take the civilization of

the savages to heart has willingly promulgated a law, which is of great succour to us in this important work: it gives to whoever adopts an abandoned child the right of a father over that child.

On 4 September 1879 Bishop Grandin wrote to M. Langevin, Minister of Public Works:

"Je suis convaincu que le seul moyen efficace pour sauver de la destruction et civiliser les sauvages du Nord-Ouest, c'est de commencer par les petits enfants, toutes les dépenses qu'on fera par ailleurs dans ce but seront à peu près en pure perte. Sans doute les écoles feront du bien, mais le jeune indien dans sa famille ne les fréquentera jamais régulièrement, et si malgré cela il parvient à savoir lire et écrire, il n'en vivra pas moins comme son père, de chasse et de pêche seulement, il restera sauvage. Il faut pour le civiliser, le prendre du consentement de ses parents, et le faire sien, il faut lui faire une famille, l'habituer à un genre de vie tout autre que celui de ses parents, il faut même, autant que possible lui faire oublier les usages, les habitudes et la langue de ses ancêtres. L'adoptant, on ne doit pas seulement le garder jusqu'à l'âge de 12 à 13 ans, ils subiraient trop alors l'influence des sauvages, il devra les garder jusqu'à leur mariage. ... Il s'agit de sauver les sauvages, de prendre comme siens ces petits êtres dégoûtants et en faire sa famille."<sup>56</sup>

I am convinced that the only efficient means to save the savages of the Northwest from destruction and to civilize them, is to begin with the little children, all the expenses which we will make through other means towards this goal will be pure loss. Without a doubt the schools will do some good, but the young Indian in his family never frequents them regularly, and if, in spite of that, he comes to know how to read and write, he will not live less as his father, only from hunting and fishing, he will remain a savage. One must, to civilize him, take him from the (consentement: may mean consent, but prefixed with DU more probably means authority. AVEC LE CONSENTEMENT DE would read: with the consent of. DU CONSENTEMENT DE reads: from the authority of) authority of his parents, and make him one's own, one must make a family for him, habituate him to a way of life completely other than that of his parents, one must even, as much as possible make him forget the customs (consecrated practices), the habits and the language of his ancestors. Adopting him, we must not only keep him until the age of 12 or 13, he would then be subjected too much to the influence of the savages, one must keep them until their marriage. ... To save the savages one has to take the little disgusting beings as one's own and make them one's family.

It was the role of the Royal Canadian Mounted Police to enforce the law which provided for the Church to raise and civilize Indian children. The Commissioners must have heard many stories about this treatment of Indians in their community visits. In 1968 this writer heard stories from a Grey Nun who participated with RCMP to remove children from their parents' homes to bring them into a residential school.

The missionary came from a very long tradition of influence and power within their own societies. They were accustomed to owning significant lands and buildings from which to operate. During the 19th century the Church was expanding all over the globe much as other European empires. In the early years of Canada, the Catholic Church was primarily a French institution. The Roman Catholic Church leadership was fully aware that the main political force in the country was English and Protestant. Evidently to realize their mission, as they saw it, they had to contend with an intolerant administration.

"... But the truth is you British L. [Lower] Canadians never can forget that you were once supreme - that Jean Baptiste was your hewer of wood and drawer of water - You struggle like the Protestant Irish in Ireland - like the Norman Invaders in England not for equality, but ascendancy..."<sup>57</sup>

To meet their objectives the Roman Catholic Church recognized the benefits which would accrue to it from working with the government to convince the Indians to take treaty.

"Lacombe (Oblate priest) was then 72 years old. He argued that he was too old, but when the Prime Minister added his persuasion, Lacombe advised Sifton on May 14, 1899: 'My religious Superiors of Edmonton and St. Albert approving of my appointment by your department I am glad to inform you that I accept the position to be a member of the Commission going this summer to make treaties...'"<sup>58</sup>

Bishop Breynat was not a novice to the Treaty process in 1921. He was present at the negotiations of Treaty 8 in 1899.

Bishop Breynat "...was the only person to be present at the signing of both Treaty 8 and Treaty 11."<sup>59</sup>

He was known in Canada and travelled widely. His beliefs were complex and at times appear to have been contradictory:

"Le droit des Indiens du Canada comme premiers occupants est indiscutable.

La proclamation de Jacques Cartier prenant possession, en 1534, au nom du Roi de France, ..., n'affecte en rien ce droit.

Le traité de Paris, en 1763, livrant le Canada aux Anglais à la suite de la bataille des Plaines d'Abraham, ne l'infirmait pas davantage."<sup>60</sup>

The rights of the Indians of Canada, as first occupants, are indiscussible. The proclamation of Jacques Cartier taking possession in 1534, in the name of the King of France, ..., did nothing to these rights. The treaty of Paris, in 1763, giving Canada to the English, following the battle of the Plains of Abraham, did not weaken them any more.

While appearing to uphold Indian rights by the above statements, Bishop Breynat actively encouraged the Dene to sign Treaty 8:

"Accepte donc de signer le Traité au nom de tous ces malheureux. D'ailleurs, vous autres, Mangeurs de Caribous, vous n'y pouvez rien. Que vous acceptiez ou non le Traité, le Gouvernement de la Reine viendra et s'organisera malgré vous dans le pays, les Blancs viendront, etc. Refuser la compensation que vous offre le Gouvernement sous prétexte qu'elle n'est point suffisante, serait priver les malheureux de secours précieux..."<sup>61</sup>

Accept therefore to sign the Treaty in the name of all these unhappy people. In any case, you Caribou Eaters (a group of Chipewyan people), you can do nothing. Whether you accept the Treaty or not the government of the Queen will come and organize itself in the country in spite of you, the White people will come, etc. To refuse the compensation which the government offers you on the pretext that it is not sufficient, would be to deprive these unhappy people of precious succour.

He also became fully involved in the negotiations of Treaty 11:

"Breynat wrote of himself in 1937, 'I may say that I am

responsible for the treaty having been signed at several places, especially at Fort Simpson...<sup>62</sup>

Breynat knew clearly the legal implications which the Treaties held for the Dene, but he still lobbied extensively in Canada and with the Dene to have the Treaties made between the Dene and the Crown

"En retour de l'abandon complet de leurs droits, -droits bien reconnus puisque les Indiens ont été sollicités de les abandonner sous peine de se les voir confisqués sans compensation, -certains privilèges leur ont été concédés."<sup>63</sup>

In exchange for the complete abandonment of their rights, rights well recognized since the Indians were solicited to abandon them under the penalty of seeing them confiscated without compensation, -certain privileges were conceded to them.

Bishop Breynat had a clear purpose in pressuring Ottawa to enter into a Treaty with the Dene. He knew from church records that it would bring financial benefits to the church schools and hospitals in the Mackenzie. It was evident to him as the Bishop also responsible for residential schools and hospitals in the Treaty 8 area.

"A residential school was opened by the Grey Nuns in 1867 at Fort Providence, and one at Fort Resolution in 1909. The government supplied beds and mattresses for this latter residence, and gave a yearly allowance of \$72 per student."<sup>64</sup>

Surely similar experience as to the status of lands owned by the Church in Canada had to have instructed the Bishop that the treaty would provide more certainty to the Church ownership of land in the MacKenzie Valley.

Bishop Breynat was also an officer of The Roman Catholic Episcopal Corporation of MacKenzie which dealt in properties.

"I GABRIEL BREYNAT, Vicar Apostolic of MacKenzie, individually, and as an officer of "The Roman Catholic Episcopal Corporation of MacKenzie", hereby appoint the Reverend Father Edouard Gouy, of the Settlement of Fort Liard, in the North West Territories, my Attorney to act in my stead to sell, exchange, transfer and dispose of all mining properties held in the name of "The Roman Catholic Episcopal Corporation of MacKenzie" which were originally acquired by the aforementioned Edouard Gouy on behalf of the aforementioned Corporation."<sup>65</sup>

The Church knew that a Treaty would bring the Dene into a relationship with the government which would make it much easier (financial resources from government for residential schools and hospitals) for the Church to attain its objective to civilize the Dene.

Although every Dene elder who has been interviewed, on whether or not the Treaty Party spoke of the Treaty being an agreement through which the Dene gave up The Land, claims that both Bishop Breynat and Commissioner Conroy denied during the negotiations that the treaty was an instrument through which the government was buying Dene lands, and in spite of the statements made by Breynat



in his memoirs (Cinquante Ans Au Pays Des Neige) it appears from correspondence of his to the government as early as 1913 that he held the position that the lands belonged to the Crown.

"Would you have the kindness to draw the attention of the government to the fact that in all the posts scattered along the Mackenzie River, a few Indians have erected, at different times, rather convenient houses, from which it would be hard to eject them when the survey of these posts is made. There are no reserves, and there will not be any for a long time. Would it not be possible to reserve indefinitely, for the use of these Indians, the lands upon which they have squatted?"

And further, as seen above, the Bishop did know, accept and operate on the premise that the Treaty process was one which provided for the Dene to cede their lands to the Crown.

The following quotation is drawn from a photocopy of a correspondence included in a file in the archives of the Dene Nation. The file in the Dene Nation is made up of copies of documents from PAC, R.G.85, Box 572, file 268. The letter reads:

Ottawa, 22nd May, 1922.

TO HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL.

The undersigned has the honour to report that application has been made by Bishop Breynat on behalf of the Roman Catholic Episcopal Corporation of Mackenzie for a free grant of lots numbered 12, 17, 19, 21 and 25 of the settlement of Simpson in the Northwest Territories by virtue of occupation of the land at the date of the extinguishment of the Indian title (my emphasis). The said lots comprise an area of 85.1 acres.

Evidence has been submitted showing the applicant, through his Agents, to have been in actual occupation of the land at the date of the conclusion of Indian Treaty No. 11, on the 22nd October, 1921, and to have placed valuable improvements thereon, and the undersigned, therefore, begs to recommend that, under the provisions of Section 76 of the Dominion Lands Act, a free grant thereof, and the issue of letters-patent therefor, be authorized to the Roman Catholic Episcopal Corporation of Mackenzie.

Respectfully submitted.

Minister of the Interior

The evidence appears clear enough. The Church intended to civilize and christianize the Dene. The hierarchy of the Church recognized that an alliance with the Crown was in the Church's interests in Canada. The Roman Catholic Bishop of the Mackenzie accepted to help the government cozen the Dene of their rights and lands. Breynat must have believed that the government would provide for the Dene better than the land and the Creator. It appears quite clear that his interest was that of the Roman Catholic Church as an



institution with lands, assets and financial resources to civilize and Christianize the Dene. He appears to have been willing to sacrifice Dene rights, social order, political jurisdictions and lands to achieve his objectives.

The government simply wanted clear sovereignty and Dene lands to prepare the way for White settlers to make money.

## DENE VS BRITISH COMMON LAW CONCEPTS OF LAND

### The Dene Relationship

When Dene speak of The Land in the context of "Going out on the Land", they mean the living universe, including the air, plant life, animal life, the ground, water, the sky, stars, sun, planets and moons. The list is not intended to limit the meaning but to help the reader better understand the value which Dene place on the concept: Land. Getting food from The Land is getting Life. Sharing food from The Land is sharing Life. Getting medicine from The Land is getting Life. Getting water from The Land is getting Life. Making fire on The Land is getting Life. Receiving a gift of rock or plant or water, etc. from The Land is receiving Life. These and many more are gifts of the Creator, as is The Land itself.

Within that universal concept of The Land, the Dene also recognize that in specific areas of her being the Earth teaches specific ways of being. This is the Dene explanation for the diversity of cultures in the world.

"Everybody has a different way of doing things, a different way of seeing things. That's because the climate is different from here. People live by the climate. That's why they're different."<sup>67</sup>

The Dene carry this teaching at least two steps further. The specific nature of each person's culture is determined over the years firstly within a specific family and a specific area of Denendeh; and secondly according to the nature of the spiritual gift(s) that an individual will receive. I will not discuss the second step here as it has been covered in the background information on the Dene given above. However, with reference to culture being family and area specific, there is clear evidence in the names which the people carry according to the localized areas in which they live. The names define either the area the people live in or the legend of their origin and on at least one occasion a group name reflects the fact that they live without the birch tree. Within the Mackenzie valley there are at least thirty such groups. For example, among the Chipewyan Dene there are said to be nine specific groupings: South Wind People, Willow Flats People, Open Water People, Caribou Eaters, and Yellowknives are some examples. In the Deh Cho some of the groups are called: No Birch People, Beside the Big River People, Among the Rocks at the Base of Cliffs People. The Dogrib Dene take their name from a legend about the woman from whom they descend.

These names carry the values of a universal concept for Dene who have grown up on The Land with their own language. For example the people who are called No Birch People, raise questions for the Dene child from other areas because many Dene products (snowshoes, drums, toboggan, canoe) were made of birch. What then did No Birch People use to make their tools? While the people of each Dene language were composed of culturally specific areas, they always knew each other and maintained formal relations through the gathering of families each spring.

Each family maintained itself within a more localized territory within the cultural areas of Denendeh. A child's education was tied, primarily, to a specific localized territory. That localized territory became an inherent part of the child's personal identity. In this context, the localized territory is The Land for the child. (See appendix B for paradigm and notes.)

It is the relationship with The Land at that level which generates in the Dene the strong sense of belonging to The Land in a relationship which requires the Dene to protect the source of his or her specific way of being and so to protect self. From that relationship with The Land the Dene People have the responsibility and right of jurisdiction over The Land to which they belong.

The value applied to Creator's Gift is Life. Life is strengthened by sharing. The Land and Life from The Land is to be shared. There is a protocol to be followed in this however, as Life is not to be squandered on a being who will abuse of it. The protocol is a teaching of the spirit. To access the gift of medicine from someone a person has to know who has the medicine, how to approach the person with the medicine and what to bring as a gift in exchange for the New Life of the medicine. The spirit will only give that information to someone who has been tested and found to be worthy of the help of the medicine. It is within this context that one has to understand the value and relationship which the Dene place on the Life of The Land. For this and related reasons the Dene are very apprehensive about simply allowing people who were not raised with The Land to take over and govern.

#### British Common Law Relationships

Land is a commodity with two classes: Fee Simple Property and Crown Jurisdiction. Fee simple property is a concept which is not completely foreign to the Dene experience.

With reference to fee simple property, there is no real connection in the Dene customs. In the Dene customs an individual owns whatever the individual makes to help the individual harvest new life from The Land. Whatever is harvested belongs to whoever needs it and is distributed by the women or in some cases by men. But the tools used to harvest (canoe, toboggan, knife, gun, etc) these belong to the harvester and no one is even supposed to touch them without the harvesters permission. But this concept and related values do not extend to The Land itself because The Land is a living being and, as all living beings, "belong's" to the Creator of Life.

Jurisdiction, is a concept which is more closely related to the Dene concept of a living relationship with The Land. As a gift, it is deemed to be exclusive to the Crown by European philosophy. As a gift, it is recognized by the Dene as a responsibility which can be shared with those whom the spirit teaches.

In the customs of the Dene elders, because The Land is the boss and will teach whoever She wants, they will accept as Dene anyone who comes to know and live as they know and live. This is

not a note on racial relationships, it is a statement to the belief of the Dene that The Land is the boss of culture, that culture is inextricably tied to The Land, and that people are required to adapt their way of life to the teachings of The Land.

These concepts present some difficulty to the reconciliation of peoples now living in Denendeh to a process of governance which would be mutually acceptable. The Euro-Canadian tradition places "Man" at the pinnacle of creation and accords each the equal right to pursue a position of authority from which to govern. This tradition makes no provision for knowledge and responsibility towards The Land. It is seen to be irresponsible by Dene elders.

"Will you vote today?"

" No!"

"Why not? It's important for you to have a say in what goes on."

"Voting will not give me a say in what goes on, it only gives me the right to give my voice away to someone else."<sup>68</sup>



## DENE ACCOUNTS OF MEETINGS WITH THE TREATY PARTY

### QUOTES FROM PAULETTE ET AL.

In Fort Providence in 1921 Chief Lefoin asked that the agreements arrived at during the negotiations be written down and a copy made for the Commissioner and a copy for the Indians. According to the oral accounts this was done and the Dene agreed to have their copy kept in the mission in Fort Providence.

In 1922 the Dene asked to have the copy brought out during the ceremonies to renew the treaty. They were told it had been lost. In successive years they asked for the written version of the Treaty. Their requests were never honoured. In 1969 the Chiefs of Denendeh met in Wrigley and had the government's version of Treaty 11 interpreted to them by one of their young people. The government's version angered the Dene leaders. Chief Julian Yendo of Wrigley and others who had been Chiefs in 1921 were still Chiefs in 1969. They knew that they had not agreed to give up The Land. They decided to organize themselves and to force the government to accept that the written version of Treaty 11, as drafted by the government, contained fraudulent clauses which had to be corrected.

In February 1970 the Chiefs formed the Indian Brotherhood of the Northwest Territories, later to be renamed The Dene Nation. They filed application in the Supreme Court of the Northwest Territories to apply Caveat on 450,000 square miles of land, their peoples' territory. Eventually the Supreme Court of Canada set the case aside on the technicality that a Caveat cannot be applied to unpatented Crown lands. This case is known as the Paulette Case as Francois Paulette, the Chief in Fort Smith in 1969 was one of the applicants and his name was used, by the Court, to identify the case.

Several themes run throughout the testimony of the Dene during the proceedings to consider their application to apply Caveat over Denendeh. The first theme is that the Dene did not want the treaty. The second theme is that the Treaty Commissioner did not discuss the Treaty document prepared for him in Ottawa with the Dene. The third theme is that there was no clear statement by either the Treaty Commissioner or the Bishop that the intent of the government in having the Dene sign the treaty was to acquire Dene lands. The fourth theme: Bishop Breynat was actively involved in the meetings to convince the Dene to take the treaty. The fifth theme: the mistrust which the Dene leaders had about the purpose of the treaty payments. The sixth theme: the promises which Commissioner Conroy made in many locations to sway the Dene towards accepting the treaty. The seventh theme: Conroy's promises were never kept. These and perhaps other themes will be recognized in the following.

The first community to accept the Treaty 11 payment was Fort Providence. Victor Lafferty was eighty-six years old when he gave witness in the Paulette case. He was the translator for the Treaty party in Fort Providence in 1921.

Legend GS - Gerald Sutton, legal counsel for the Dene



VL - Victor Lafferty, interpreter in 1921.

GS "Maybe if you could just tell us what you remember taking place in 1921?"

VL "Well, the Treaty party arrived and asked me to interpret. I went and Paul Lefoin was headman among the people. Four or five families were with him. He kept them alive. When he came in with one or two moose, he gave a piece here and a piece there and he gave it to cook and when everything was cooked they made a feast and dance. ... When the Treaty party came, he asked me if I would take treaty and I am going to tell you how we lived. We are going to make a living out of this country. There are posts all around here. I make a living out of them. Liard, Fort Simpson, For Rae, that is the land we live on, and on this side, I am kind of a headman among the Indians because not everyone makes a living that don't hunt. On the other side, some of the old people, they have a headman. We want to hunt the way we used to, to make a living, hunting, fishing, birds, everything. He said we wouldn't change the way we are living with the Treaty, but he said then the Treaty is only five dollars. One man can eat on five dollars, and the day after that, what is he going to eat? You are going to help him when he has nothing. Can't you help him with fish nets and ammunition and something else. He didn't want to stay off the land. He said "I don't want you to put us on reserves. I don't write or read, but I know outside you put some Crees on a small piece of land, and after they hunted that, they are hard up. We don't want that down here. We want to be free hunting. We don't want you to close the animals, moose or anything else we live on. You have closed the buffalo and swans and killed them now. They used to be our food. So, he says, "If you don't change anything, we will take the Treaty." So Conroy said "Take the pencil" and he said "No, I am not going to touch it because the people won't know anything, the Indians in the bush. If you bring the population here," he said, "I will sign the Treaty", and then Conroy says "All right," he says, "While the Mackenzie River will flow and the sun rises in the east and sets in the west, nothing will changed. Now take the pencil", and he said "No".

He couldn't get him to touch the pencil, and then he said we will walk over to the mission and a whole bunch of us walked down there. The Bishop was there and the priest and there was a table and we all sat around, and the priest and the Bishop, they could speak Slavey, and I was just standing around and sometimes I walked outside, and when we were through, we came back and took the pen and we took Treaty then.

GS "After the Bishop and Conroy and the Chief went to the mission, they returned?"

VL "Yes, they came back to the tent. ..."

GS "They came back to the tent to pay Treaty?"

VL "Yes, they walked all the way from the mission to the tent again. That was the place they paid Treaty. Paul Lefoin told them "What I say and what you say, write it down on two sheets of paper. One will be for me and the other one you keep."

GS "Do you know if they did write down things on two piece of paper?"

VL "Yes. Old Paul said "I am an Indian and can't keep paper, living in an old shack." So he said the Bishop will keep it for him.

GS "Did you see whether Paul Lefoin signed anything?"

VL "Well, he must have. If he didn't sign it, he must have touched a pencil, because they wanted him to touch a pencil to sign. He couldn't write. All he could make was an "X", you see. He never went to school.

GS "Did you ever see Paul Lefoin make an "X" or touch the pen?"

VL "No, I didn't see then, because when they were over at the mission and sitting around the table, I didn't have no place to sit around there. But he must have touched the pencil because they were through when we came back and they started to pay the Treaty."

GS "What would touching the pencil mean?"

VL "It meant sign for him or something like that. It must have. He knew that. He wouldn't touch the pencil when the population wasn't there. ... When he said touch the pencil he was going to sign for him, I guess, put his name there for him, perhaps, make an "X" in between his name."

GS "Touch the pen, wouldn't mean to you, would it, that he didn't make his own "X"?"

VL "Well, if he was willing to sign, he would touch the pencil, but he wouldn't do it unless the Bishop was there, but he didn't sign at the tent here. He must have signed it at the mission. I didn't see the paper after the mission.

At this point the Court "C" asked:

"You interpreted when they went over to the mission and then the priest and Bishop did the final thing? Is that right?"

VL "Well, I went over there and Paul was amongst them, but I didn't see them sign.

"C" "You didn't stay then?"

VL "No."

GS "When they came back to the tent to pay Treaty, was anything else said at that time?"

VL "When the old man came back, he started to pay Treaty right away."

GS "If I can get back to this thing, touch the pen. How did people at that time make their signature if they didn't know how to read and write?"

VL "Just the same as now. If an Indian doesn't know how to sign his name, they make an "X", and that is it."

GS "Was there any talk of white men coming to the north at that time."

VL "They didn't say that. They just wanted them to take Treaty. Some of them didn't tell their names. It is a woman, they call her Mary, that is how they did the names."

GS "I have no more questions, My Lord."

"C" Mr. Brand?

MB "Mr. Lafferty, did you do any more interpreting after Conroy and the Chief went to the mission?"

VL "No, no."

MB "Did you at any time hear the Bishop say whether the Treaty paper was signed or was not signed by the Chief, or was there no talk about it?"

VL "There was not talk about it at all. It was only a Treaty."

MB "While you were still interpreting in the tents did you see any of the Government people put "X"s on the paper?"

VL "No, they didn't say anything about that, but we didn't ask anything. They would have to touch the pencil. I don't know."

MB "When the Chief was asked to touch the pencil, was there a piece of paper around?"

VL "Well, he must have had a piece of paper where he was sitting but he didn't touch the pencil."

MB "Did you see the piece of paper that was to be signed?"

VL "I wasn't watching pieces of paper. I was just talking. I don't know. I never heard talk about it. They write down everything on it and then I think they signed it but I never see it again or heard of it again."

C "We mustn't lose track of the fact that it is not much different from lawyers negotiating for clients and it doesn't take five minutes. The touching of the pen is a symbol at some point, and the substance of this man's evidence is, you put down what we said, then that is the deal. I think that is the impression we can get from the evidence."

MB "How was the Chief asked to sign? Was it through your interpreting or was it done through a gesture?"

VL "Yes, he said "Touch the pencil". ... So he told the Chief he says to touch the pencil, but he said no. The Chief asked that there be made two pieces of paper."

MB "Was that after the Chief said no, I don't want to touch the pen?"

VL "It was before he asked him to touch the pen. The Chief at the start wanted everything on two pieces of paper and he meant after it was signed he would keep one and Conroy

would take the other." ...

MB "Were you able to read and write English in 1921?"

VL "Yes."

MB "Were you asked to read and translate any piece of paper or writing during the negotiations? Do you understand the question? Were you asked to read any paper and also translate what the paper said to the Chief?"

VL "No. The answer is no." ...

MB "Did you see any of the Indians kiss a bible during the talk about the Treaty?"

VL "It must have been, but I don't remember. Every time the Government talk about something, they have Bibles, I know."

MB "Did the Government people, Conroy, talk about the Indians getting protection from the Government, if they took the Treaty?"

VL "He told the Chief that if anyone was destitute, he would help them."

MB "Did you hear Conroy say what the Government was to get if the Indians took the Treaty?"

VL "I don't catch your question."

C "Mr. Lafferty, the Government promised things to the Indians, rations, ammunition, and so on, that is right isn't it?"

VL "Yes."

C "What did the government want the Indians to promise, if anything? Did the government want something out of the Treaty? Why did they want the Treaty?"

VL "Well, Paul Lefoin said it is not every Indian who can make a living hunting. You have to help them with something. All of them should get ammunition and shoot and if anyone is starving in one post, and some of them starved, they could get flour and bacon and things like that at the post. That is what he told them."

MB "Did Conroy say what he wanted to get from the Indians?"

VL "I don't know."

MB "How long were the Government people in Fort Providence to talk about the Treaty?"

VL "All I remember was two days we were talking. Some Indians say it was more than that but I don't think so. I think it was only two days."

MB "Those are all the questions that I have, Sir."

GS "I asked you before if there was talk of white people coming to the North and I don't remember your answer?"

VL "No, I guess he didn't say anything in the first year about white people coming into the North."

GS "There was no mention of Indian people obeying the laws and living in peace with white people?"

VL "No."



Joe Squirrel translated the following testimony of Michel Landry to the Court.

"Yes, he said he was here when the Treaty was signed. He says he wants to say what happened with the Treaty at the time. Paul Lefoin was leader of the tribe here and he says he was to talk for them a bit. So they started having a meeting when the Treaty party was here but nobody knew what it was all about, so Paul Lefoin was asked to explain what it was all about, this giving out money, and so he said he wasn't going to take the money. So they didn't want to take the money ...they finally gave in, I guess, so he said they made a sort of peace Treaty with the Indians. He said there would be peace among them as long as the Mackenzie river is flowing and the sun goes back where it comes. He says the first Treaty, when they first signed the Treaty, everybody got twelve dollars, and he said they made a promise that they would be free to hunt and trap and fish and make a living from the land, they would be free to do this. He feels these promises have never been kept. He said when the Treaty was signed, they gave a copy to the Chief, the Chief said a good place to keep it would be in the mission and so they gave it to the priest. Next time they wanted the Treaty, it was lost and they never found a copy of it again."

"He says he remembers very well that land was never mentioned at the Treaty but there was a lot of talk about it just being a peace treaty. The money was given to them for a peace treaty."

"Yes, there was a lot of mention of game and trapping and fishing, but a few years after that they starting issuing licenses, trying to say you are only allowed so many game, one moose a year, so he figures that the Treaty has been broken quite a few times, those promises." ...

"There was no mention of reserves. ... he said they got some nets, shells, some flour and that kind of thing. ... He said there was a promise made that they should always get that. They used to call it rations and shells. ... It was a policeman who always gave out the shells and nets. ... He thinks he is his own boss."

The court interjected in the line of questioning at shortly after the last quote.

C "Now, I want you to ask him another question. The white people at the time of the Treaty promised they wouldn't interfere with hunting and fishing and trapping, is that right?"

"Yes, he says that is what they said."

C "And they promised to give rations?"

"Yes, they promised to give rations. They still give out shells and nets."

C "And they promised Treaty money as well?"

"The first time they gave out Treaty, they gave out



twelve dollars and promised to give twelve dollars each summer but they changed that to five dollars."

C "In exchange for that, what did the Indian people promise?"

"What he heard was that the exchange was to be peace prevailing among each other."

C "Does that mean Indians and whites?"

"Yes, But he says there was never any mention about land for the money."

The Treaty Party went to Fort Simpson next. Ehtsie (Grandfather) Norwegian was one of the main spokesmen for the Dene people from the Fort Simpson area. His grandson Louis Norwegian was present at the Treaty meetings in 1921 and gave the following testament to the court.

"My grandfather, the old Norwegian, is the one who tried - the Fort Simpson band tried to make a leader out of him or a chief out of him, and he was the one who was speaking for all the Indians at Fort Simpson. Every time they wanted to give the money, the grandfather who was supposed to be chief, he did not want to take the money for no reason at all. ... I remember that they have meetings to try and pay the treaty, and the Commissioner who paid the treaty tried to make the Indian leader take the treaty first, and they had a meeting for three days, so my grandfather did not want to take the money until - he wants to be sure what it is all about. And my grandfather told me, "I am not going to give any money for nothing, and five dollars means a lot, and we want to find out, and why do we take the treaty, so we did not want to take the treaty right away". They mentioned this to my grandfather, that he knows the sun rises in the east and sets in the west, and the MacKenzie River flows, and what I will have to promise have [sic] been said by the treaty date, and as long as the words [sic] exist, whatever the Commissioner told the Indians, the word would never be broken. My grandfather wants to know why they (the Dene) have to take that money from the people (treaty party), and the Commissioner told him that the treaty that is going to be developed in future years, that there would be a lot of white people and if the Indians took the money they may be registered, and if there is enough white people in the country, the government will know wherever the individual Indian is going to be, and that is all the treaty amounts to."

GS "Do you recall what some of the promises that were made by the Commissioner, do you recall what some of those promises were? ... Would you state those to the court?"

LN "If they take the money - this would last about a year - a grubstake of any kind. ... It would be there by the fall. ... He said if he took the money as the treaty and you want to build a house and maybe 200 miles away from

the place, and you want a cook stove and if it is heavy, the white man has to pack it to where you want it. It is going to be done. ... My grandfather told me, whatever this country is, whatever will make a living in this country, having a trap is belonging to the country, and belonging to the people in the country, so they have a promise not to interfere with one another. The commissioner promised a letter to the bishop on fishing and trapping in the territory as long as the sun rises in the east and sets in the west and the Mackenzie River flows, and maybe in quite a few years' time they have brought in game regulations."

GS "Do you recall whether the Indian people agreed in 1921 at Fort Simpson to give up or sell their land to the government or the King?"

LN "There was a 3-day meeting but, as far as I know, the land and the country never was sold or surrendered to the white man."

GS "Do you recall whether the Indian people agreed to take reserves?"

LN "They did not mention reserves either, but one thing I hear, that once the Indians took the treaty, the Indians in the various bands in the territory will be in the hands of the government. That is all I know."

GS "I am reading from page 11 of Exhibit 4, and it indicates that Antoine signed as Chief. Do you have any recollection how that came about?"

LN "What happened is that they had a 3-day meeting and they have something to eat and when they went home and got supper there was one Indian Antoine was left behind, and they said there was no harm in taking the treaty, so the old man took the treaty. He was not elected. He took the treaty, and that is what happened."

GS "Was Antoine recognized by the people of Fort Simpson as chief of the people?"

LN "As far as I know my grandfather was a leader at that time, but then this fellow Antoine was not a leader, but he was kind of greedy, and so he took the money while they [sic] people was away, and that is why everybody took the treaty and they made him a chief from then until he died. ... They say that once Antoine accepted the treaty the Indians did not make him the Chief but the white men made him the chief."

Mr. Norwegian was then examined by Mr. Brand.

MB "Who is the person who told you, Mr. Norwegian, what the promises were?"

LN "I wasn't too old but my grandfather take me along to that treaty but I heard what the Commissioner have told my grandfather and also my grandfather told me."

MB "How old were you in the year that the treaty was signed?"

LN "I don't exactly know, but I was old enough to understand everything that was going on." ...

MB "The promises you have described to the court, did you hear any of those promises being made by the Commissioner through the interpretation of that interpreter?"

LN "He promised a lot to my grandfather, and my grandfather did not want to accept the promises, and he wants to know why he gave the money to the Indians."

MB "But did you hear the interpreter say those things?"

LN "Yes."

MB "Are there any of these promises that you did not hear said by the interpreter and that were later told you by other people including by your grandfather?"

LN "So, I heard a lot of - about it afterwards, promises which they made, so some other people came up, and other promises were made when they took the treaty."

At this point in the proceedings there was some confusion and a brief discussion between the court and the lawyers to try to understand the testimony.

MB "Would you try your best that you can remember of the promises that were made by the Commissioner through the interpreter while you were there?"

LN "They had a meeting for three days, and the Commissioner repeated the same thing for three days but my grandfather refused to take the treaty. He wants to know why, and the Bishop ... was trying to make my grandfather take the money too, but he still did not want to take it because he don't know why he is taking the money for."

MB "What promises did the Commissioner make and make again during those three days, but only tell me the promises you heard yourself and not what other people have told you."

LN "He said, if you take the treaty money, the promises that are made at the time, a load of grubstake every year at treaty time. That was repeated time and time for three days."

MB "Were there other promises of the Commissioner that you heard yourself?"

LN "It is a way of life in the country, the liberty for fishing and trapping, and there won't be any game restrictions; you shall have the liberty as long as the sun rises in the east and sets in the west and the MacKenzie River flows. This is a promise that I heard."

MB "And all the promises you described before, you heard yourself?"

LN "Whatever I told you, I heard it with my own ears. ... Whatever I told you, the commissioner and my grandfather were talking together through the interpreter, and that is what I heard."

MB "And who was talking about the Indians then being in the hands of the government; who was talking about that?"

LN "It is the Commissioner that have told that to my

grandfather, "you take the treaty, and that is the way we are going to look after you. It is in the hands of the government." ...

MB "Did you understand that when you were told that the Indians would be in the hands of the government that that meant in the hands of the King in England?"

LN "I did not know at the time there was a King or anything like that, but when they told me of these monies coming from the King, that is why I realized there was a King, but before I didn't know anything about it."

MB "You told us about the money and you have told us about that you could hunt and fish; what, Mr. Norwegian, did you mean about the grubstake coming by fall; what was meant by that?"

LN "He did not say what kind of stuff it is going to be but any kind of equipment they need, and I don't know how big a scow, and he is talking about a scowload every fall, so they don't go hungry, ..."

MB "These promises that were made, from what you heard, sticking with the promises that were made by talk, could those promises have meant that by signing the treaty you would continue to fish and hunt but because some white people would be coming in the government would help you with ammunition, some money, and scows?"

LN "This is separate. Every treaty Indian is supposed to get so much ammunition and fish nets besides the grubstake, besides the promises, and shells and fish nets, and there were promises besides that."

MB "Did the Commissioner say why he wanted you to sign the Treaty?"

LN "There was no discussion between the two - my grandfather and the Commissioner - repeating the same thing, that if you take the money the government is going to look after you, if there is too many white people come in, so the other Indians want to get lots of things, and that after they become registered the government would look after them. ... There was very big discussion about this quantity of white people coming in the future to the Northwest Territories, and my grandfather and the Commissioner having quite a discussion about that."

MB "Did the Commissioner say what the white people would be doing?"

LN "The Commissioner have told my grandfather that the white man would be looking for gold and try to find and want to make money. That is all I heard about it."

MB "Did he mention that some of the white people would be living in new settlements?"

LN "As far as I know there would be lots of white people in the country, in the Territories, but he never mentioned that the white people was going to live with them. That is one thing I never heard."

MB "Are you saying your understanding was that the white



people would just be sitting and then going back?"

LN "No, what I am saying, that the white people would come in as a prospector and as a business man to make money in the country and to stay in the country, but he never said that white people would come in to live in the community. I never heard that."

MB "Did I understand you to say that there was a white man that met Mr. Antoine, or Antoine, the chief?"

LN "So my father - my grandfather was a kind of leader at that time, and they had a 3-day meeting, and at the end of the 3-day meeting they never got anywhere and they went home for lunch, and the old Antoine was there, and they talked with him, and he said, "there is nothing wrong with taking the money because we are going to get a supply of grubstake in", and he took the money, and that is why the white man make him a chief; the Indians did not make him a chief."

MB "Did the Indians after that recognize Antoine as the chief after Antoine had taken the money?"

LB "So, he is the one who took the money behind the people, and the white man made him a chief, and he stayed a chief until he died." ...

MB "Once Antoine took the money did he take the money for the people too; in other words, did they get money too?"

LN "So what I mean to say, my grandfather did not want to take the money, and he wanted to know why he has to take the money, and he wanted to know why he has to take the money and they did not tell him why they are paying the treaty, and this old man Antoine, when everybody went home, he wants to take his portion of the treaty as the chief, and they made him a chief, and he took his portion, and after when he came back to the meeting then Antoine already took the treaty as the chief, and then the Commissioner said everybody had to take the treaty after that."

MB "Is it correct that Antoine only took his portion of the treaty money but in the position of chief?"

LN "So the white man made him a chief, and they gave him a chief's payment, and all the Indians had to take the treaty. That is exactly what happened."

MB "Did Antoine say that or the Commissioner?"

Ln "The Commissioner say that."

MB "Are you able to say whether your people took it because the Commissioner said so or because Antoine then was accepted by your people to be the chief?"

LN "The Commissioner told them "he is the leader; he is your chief; he took his portion of the treaty money so you have to take it".

MB "Did the commissioner do anything else than say those words, "now, every member had to take his portion?" Did the Commissioner say anything else to the people when they came back than that they had to take it, or did he



- use any force?"
- LN "There wasn't any other pressure besides what he said. "He is the chief and he took the money, so you have to take the money," so the Indians took the money after that, and no more meetings after that.
- MB "It is true that your people accepted Antoine as the chief because he had been made the chief, had been given the medal?"
- LN "Yes, the white man make him a chief but the people were in a kind of fear to look at Antoine because the white man made him the big man, and the people were kind of scared of him, so they have to make him a chief."
- MB "This treaty we are talking about and the negotiations, did they take place in Fort Simpson in 1921?"
- LN "He never mentioned, the Commissioner never mentioned about negotiations, about the treaty or nothing. All he said, that "after you took the treaty you will be protected by the government," and something like, "you would be in the hands of the government."

Similar witness was given about the meetings between the Treaty party and the Dene in Wrigley, Fort Norman, Fort Good Hope, Arctic Red and Fort McPherson.

The following quotations are examples of some of the concerns that were raised by the elders who met with Commissioner Conroy and Bishop Breynat to discuss the purpose of the government in offering treaty to the Dene.

"You will eventually begin to work negatively, you will want to work evil and make it miserable for Dene."<sup>69</sup>

"When treaty is given then eventually you will count everything."

"No, that will not happen. The treaty money is to only help poor people. For the Dene nothing will be counted. In the past what you have worked on, that you will continue to do. Nothing will be counted for the Dene.", "they told my dad." "Pretty soon moose, fish, things like that will be counted by you" he said. They said "No! That is not what we are saying. It is strictly for treaty payment. They said it is for the poor Dene and to provide food for Dene that is why we want to pay out treaty."

My dad said: "You are all lying. Pretty soon after I perish you will count up everything. You are lying."

"No we are not lying."

"Yes you are lying. We will not take the money."<sup>70</sup>

"There was an old man, Ehtsie Norwegian. He was the spokesperson for the elders and for his friends. They failed to convince him. He didn't want to take the treaty because he wanted it according to his terms. Ehtsie Norwegian discussed it with them for two nights. 'If only I get my terms', he said. They wanted it to go their way.

He (Ehtsie) spoke intelligently and failed to change their minds. So he left. They all went home. But, an old man stayed and sat with them. What was his name? Nakekon. They gave him reasons why they wanted to give treaty. He thought they were telling the truth. He got convinced and took the treaty without the people's knowledge. He believed them so he ruined it for everyone. He was deceived and fooled and a big medal was placed on him. So immediately treaty was paid out even though people said no. He received treaty money. The people thought that since he was one of them and had received money, everyone took treaty money. After they lied to the old man, as a result of one Dene receiving treaty money, it was to come to pass, so treaty was paid to everyone. Ehtsie Norwegian did not take treaty money for the following two years because he was not happy. This is how it happened they say. Whatever was discussed was put on paper. They say it went down south. They also say it burned. They also say it was down there. A lot of confusion. They are hiding it from us. It is evident."<sup>71</sup>

"Yes I remember, but I didn't ask too many questions. We understood that there was a meeting and that they were going to have all the people at the meeting to talk about the treaties, but some of the people did not want to go because it had to do with land, and they did not want to give up their land.

They said, 'This is our land, we were born here. It is our land and no one will take it from us.' This white man and a Hudson Bay Clerk told us that the money was given as treaty money. This land is your land they said. As long as you live and no one will take it from you. The people said, 'Are you sure no one will take this land?' and the white people said, 'Yes, we will not take your land.' So then our people took the money."<sup>72</sup>

"I remember when I was young everybody was talking about the treaty money, ... that was coming. But everybody in our country at that time had lots of money because we had lots of fur and hunting was good and nobody was in need of money. About then this whiteman came in and he was a big shot of some sort. He came and said, 'I'm here to give you some money.' But nobody knew what he was talking about because nobody was in need of money. They didn't know what he was talking about, and the people asked lots of questions. They said that it would be for a better future. That is how they explained it. This big shot, they really questioned. He sounded very truthful. He said, 'I am giving you this money because in the future there will be lots of white people in your country and you will be here, and you will be remembered as the treaty people, and he put one thousand dollars on the

table. He said this is treaty money. It will always be known as treaty money and they got one man who was known as a treaty man. He said this is your land and no white man will take your land where you go fishing and hunting in this land. No white man can own it. You are the owner. After he said this 'For the future even if there are lots of whitemen remember you are all Treaty Indians. You make your living here. You will have someone to look after you always and remember the whiteman will never be your boss. The Indian then took the money because they thought it was explained. All people then agreed and said yes."

"I'm very sorry I can't tell you very much about that (the signing of the treaty) because I was police interpreter at the time and I was on the job and I didn't have a chance to get down to the meeting you know. I had to wait until they tell me. ...they were going to pay the treaty then they told me to go down. The second year they were paying Treaty, again I was tied up..., but just about finishing time the Chief came and called for me. So, I went down and he says I want to ask this Indian Agent what he is doing and why he is giving us this money? I want to really find out what he says. So I told the Indian Agent and he says ... King George ... shake hands with you, your wife and children once a year, ... and we give five dollars. That's what we're doing. We're not buying nothing from you, we're not buying anything from you. So Chief says alright go ahead and pay us. And he paid the Treaty, that's as far as I know. But, I get some word from my own people after work. According to their word everything was promised on the top and in the name of King George. ... And today what's going on I don't like it, because in the Bible they say hear God and honour the King. And here these people ... promised us in the name of King George, today they're changing things what they promised... And they promised as long as the sun and sky and river run, this will never change and that is still up there. And the river still running. So even we are foolish we can see their word is no good to us today and that's what we're trying to fight today."

"Aklavik, 1921, the first Treaty was paid and afterwards the Chief was talking to the Indian Agent. I was about 21 years old at the time and I was police interpreter. I stayed at the barracks down there. The Sergeant sent me down there and it was just about finished down there, and the Indian Agent was talking to the old Chief. We'll take this land we stand on and I'll give you a mountain. The old Chief said no. The Chief said 'You can't do that. This land we use for trapping, what are we going to get off that mountain?' I was listening to that. Three years after that they are paying treaty. I was interpreter

then. The old Chief said 'I want to ask you one more question before we take that Treaty money. Why are you offering us money? Are you buying something from us?' So I told the Indian Agent what the old Chief said and the Indian Agent said 'No. Once a year the party will shake hands with you and he will give you \$5.00 a piece. He said alright sign the Treaty then. And I'm the man interpreter then.'<sup>75</sup>

"Hello my people. I will talk to you about the first treaty that was given. A man named Mr. Conroy was the first one that gave out treaty to my people here. It was the first time I saw a gas boat -- what they called a gas boat; Mr. Conroy came with a gas boat. When he arrived here we set up a great big tent on the sand bar down here, right at the beach. They set a table in that tent, with chairs around it. Then he put a flag up. And on the table there was lots and lots of money. Cash.

The Chief, Chief Hoary asked him, "What is this money for? What is it for? What did you bring it here for?" Mr. Conroy told him this, "You are wearing a medal right there; we are giving you a medal with the King's head and the Government's head on it. And you see them shaking hands on that medal. In the same way, the King is shaking hands with you and your people with this money."

"So Chief Hoary asked him a question again, "After we take this money are we going to continue living off the country, going anywhere we like, and making our living? Are we going to carry on like that?" So Mr. Conroy told him, "Yes, you could make your living the same, but you're going to have land set aside for you." And the Chief asked him, "What is that land for? What is it for?" And Conroy said, "Well, just to keep it around there. Just to have it on hand."

So he went on and told the Chief, "If you got that land, it's just going to be kept around there. And someday there's going to be lots of people come down here, and if they happen to find any oil or anything in your land, then you will be kept real well. What they call -interest- with that you will be well looked after.

And then he told him that, "If you hold that land, it's going to be on this side of Peel River (East). It's going to be your land right up to Snake River and around Snake River and right down the Arctic Red on this side of the shore, right down around the mouth of Peel River. And in this land no Whiteman can cut down a tree, as they like, not even one. And they're not allowed to trap or do anything on your land. This is the land that will be kept for you."

And he also told him: "Some day, when there's lots of Whitemen, if before that you have any eddy on the



river, or creek where your area is, you will have to mark it. All you have to do is to put a post on each side of the creek or at your eddy and put "I.D." on those posts. And that's yours so they don't touch it. They'll just walk away. In this way the Whiteman will have to buy a license to do any fishing or anything."

So the Chief went on to ask him again, "Maybe if you kept that land for us, then someday you might just chase us into it and chase us around. This is what you're after." But Mr. Conroy said, "No. No one will chase you around as long as you're Treaty."

They never said nothing about our land, just this one; that's all they talked about. They never said anything about it. And then we heard that we turned our land back to the Government, which is not true. We never knew anything about it. They never said nothing about the Yukon land -- but the Snake River is already in the Yukon, and it was given to us at the time. He told us that we can hunt and that we can do our living any place we like.

He said, "By this you'll know" -- that's why he said this-- "Do you see that Black Mountain down there?" And the Chief told him, "Of course. It's my country so I can see it all the time." And these are the last words from Mr. Conroy, "You see that Black Mountain. You know yourself as well as I know that no one will move that mountain away. Well, you will be the same. The Government is like that. And now you've got your Treaty; as long as you're Treaty, no one will move you away."

Another thing that he promised us was that we would get destitute rations for the poorest people, the old people, and also the emergency cases -- that they'll help any families if they get stuck or some-thing. And also if you are ever in the hospital or need medical care, if you're sick, then you're not supposed to pay at all. It'll just be free to you. This is what he promised.

All this was promised to us, and now, in this town, wherever we want to build, we have to pay for our lot. And the White people that look after us are the boss now. I don't like this. We are not the boss of our land at all. After all, it is ours.<sup>76</sup>

In the early 1970's the Indian Brotherhood of the Northwest Territories also hired some young Dene who had been to school and were fluent in their language to interview elders who had been present at the Treaty meetings in 1921.

Interview of Francis Tanche by Joachim Bonnetrouge on the negotiations of Treaty 11 in Fort Wrigley

Legend: JB - Joachim Bonnetrouge

FT - Francis Tanche

JB "We are in the town of Fort Simpson, Northwest



Territories. The date March 23, 1972. The person I will be interviewing will be Mr. Francis Tanche. The persons present at this interview are Joseph Clille, Ernest Moses, George Tale, Vital Clille, and Dolphus Jumbo. ... To start will you give me your name and your age?

FT - Francis Tanche and I am 72 years old.

JB - Do you remember the first treaty?

FT - Yes, I was there when they had the first treaty in Wrigley. It was in the summer of 1921 and the first monies given out was \$12.00 dollars per person. Uncle Moses was the spokesman for the people in Fort Wrigley and he was talking to the Commissioner. The Commissioner said I am going to give you Treaty and I would like you to say what you think of it. The Treaty talks were being held at a long table near the river banks and store manager Johnny MacPherson was the interpreter. Seated along the treaty table were Johnny MacPherson, the Commissioner, the bishop Breynat, the spokesman for the people Jimmy, and the mechanic or engineer for the Commissioners party. The Commissioner again said that he wanted to hear what the spokesman thought about the idea of a treaty being given out.

The spokesman said that the treaty being given out was to be taken seriously and that there would be no going back on the promises of the Commissioner even in the future when the Chief will be no longer around to defend the treaty as he was doing right now. The Commissioner asked the Chief what was the problem with the treaty right now as it is, and the Chief answered saying that after the treaty was signed the commissioner and his government would not be going according to the treaty as was being negotiated right now. The Chief said that after he was dead and gone the commissioner would not keep his promises. The commissioner promised the chief that no such thing was going to happen. The chief said that he could accept the treaty on these terms and that this land which is our land would not be mentioned in the treaty. The commissioner said that the Indians would do as he pleases and there would be no restrictions in trapping fishing and hunting. The commissioner said that he would send anything that the chief asked for by the end of this summer as a token of good faith in the government. The chief said that being Indian the only thing that he can ask for is food for his stomach and what little money he may be making. So the commissioner promised that he would send food in return for the signing of the treaty. The commissioner promised sending a barge with livestock such as pigs, chicken and cows. The commissioner promised that this barge would be coming in the fall and that even in winter the government would help out the Indians insofar as even through the winter the whiteman would be packing food over land to feed the

Indian. The commissioner said that as long as the sun remains in the sky and the river does not change its course, his tongue would not lie. So the commissioner really lied when he made all these promises. The commissioner wanted the spokesman to be the chief but he refused saying that he wanted his son-in-law. The commissioner agreed to this and he said that he would give out treaty but figured they should talk some more. The spokesman, Moses, said of the young children who would be going to school and learn the whiteman's way of life, and he said that the government would make soldiers out of the young Indian children, which he felt was no good at all. Ever since the Indian was on earth he never did once point his gun or weapon at another human being. The commissioner said that Moses was foolish to talk like he was. The commissioner said that the treaty was given out with no mention of wars. The commissioner assured the spokesman that there would be no more wars and not to think in those terms. So the negotiations were hashed out and then treaty money was given out. Twelve dollars a head was given out and the commissioner said that the following year he was not sure whether it would be him or someone else who would give out the treaty money.

JB - I guess you got your first treaty money in Fort Wrigley?

FT - That's right; in Fort Wrigley I received the first treaty. I am from Wrigley but have moved down here to Fort Simpson. So, what the commissioner promised to the old chief never did get to be the truth, because the Dene never did get the food as was promised them in the first treaty. But later the government started giving out ration, family allowance and old age pension. I guess the whiteman was trying to make up for his lies at the first treaty so they started helping out the Indians. The commissioner never did come back to give the treaty the following summer. There were claims that he died, so Mr. Harris of Fort Simpson gave out the second treaty.

JB - At the treaty talks was there any mention about our land, was it bought off us?

FT - No sir, there was no mention at all about our land. But last summer at the all chiefs conference in Fort Rae, there were claims that we accepted the treaty money in return for the sale of our land. Most of the old people who were present at the first treaty did tell the Indian Brotherhood (Now called the Dene Nation) about the treaty, but I did not tell my story, this is the first time that my story is being taken.

JB - What was said about hunting rights...?

FT - The old chief and the commissioner did talk about this and that there would be no restrictions for the Indians in regards to hunting moose, ducks and so on as long as the sun still sets in the west and the river

flows... But now-a-days there are all kinds of restrictions on the hunting of animals, pelts and closed seasons on birds. I have observed all these restrictions and have thought about them but to this day I have not found out why things have changed so much as compared to what was promised at the first treaty.

JB - What was said about medical care for the Indians at the first treaty?

FT - We got our medicine from the old doctor that was stationed here at Fort Simpson, and we got good service out of the old doctor so that was good. But as of late the medical service has deteriorated to a point where the present doctor does not have anything to do with Indians and their health at least it seems that way as compared to the first doctors care. ... you go to the doctor, he gives you pills and sends you a bill saying you got so many dollars worth of medicine but we do not pay it cause we do not have to pay for it according to treaty 11.

JB - What was said at the first treaty about education.

FT - Well, at the beginning the children were sent to Fort Providence for five years and then were sent back to their parents. Even then after five years were past they started changing things around again like it is being done today in schooling for the younger people. But I don't think there was anything definite ... laid down in regards to education at the first treaty.

JB - The commissioner was Conroy, he had the Vicar with him he was Bishop Breynat....

FT - Yes, the Bishop was asking the old man to be chief - the bishop was trying to convince him to be the chief in order to get the treaty signed as soon as possible, but the old man refused and said that he was too old to be chief and that his son-in-law should be chief because he will be living years after the passing away of the old man. So the ... son-in-law was made chief.

JB - ... Is there anything else you want to add to the story you've already told me? ...

FT - Yes, they are stealing our land right in front of our eyes, which is a real crime.

The following is a transcript of a taped interview with Chief Julian Yendo of Fort Wrigley.

July 2nd, 1971, Fort Rae, N.W.T. We are talking with former chief Julian Yendo. Present [with Yendo] is the interpreter Chief Ed Hardisty of Fort Wrigley, Philip Moses, John Baptiste Williams, Paul Moses of Wrigley and Charles Kobie and Tadit Francis of Fort McPherson.

Legend I - Interviewer

ED - Ed Hardisty, Interpreter

I - Would you tell us your name and your age and where you are from?

ED - His name is Julian Yendo and age 91, former chief of Fort Wrigley.

I - Would you please tell us what you can remember about the signing of Treaty in 1921?

ED - He was off to fish net. That's when the treaty party arrived after he wasn't home.

I - Did he himself actually sign the treaty?

ED - Answer is no.

I - Did he have a reason for not signing the Treaty?

ED - He doesn't know nothing about the paper or signing anything...

I - Did anyone else sign the Treaty at that time?

ED - No.

I - Thank you.

Tadit Francis left at this time. The interviewer showed Julian Yendo a copy of Treaty 11 reprinted from the 1926 edition by The Queen's Printer. This is the copy of Treaty 11 with the adhesions and reports.

I - Julian Yendo I'm showing you what is supposed to be your signature to the signing of the Treaty. Did you make such a mark (the name Yendo is written in syllabics) on the Treaty in 1921?

ED - No.

I - How have you marked your signature in the past?

ED - The only way he signed his pay check is making a cross. That's all he knows.

I - This is the only way that he ever signed his signature, with the cross?

Ed - ... the only way he make his mark, that's all he knows.

C. Gerald Sutton, legal consultant to the Dene Chiefs in the legal proceedings attempted to check out Julian Yendo's claim that he did not know how to write in syllabics. He wrote to Mrs. Joan Craig, Archivist, Beaver House, London, England requesting if the Hudson's Bay Archives had any documentation of any kind with a signature of Julian Yendo within a period of 20 or so years from 1921 and thereafter. The archivist responded on 8 December 1971:

"We regret that we do not have any Fort Wrigley records for this period, nor do we know of any other likely series where a document might be found bearing Chief Yendo's signature."

The following is a transcript of an interview conducted by legal counsel Gerald Sutton with Philip Moses of Fort Wrigley on July 2nd, 1971. Others also present at the interview were Chief Ed Hardisty of Fort Wrigley, John Baptiste Williams, Paul Moses, and Chief Julian Yendo of Fort Wrigley, and Charles Kobie of Fort MacPherson.

Legend GS - Gerald Sutton

ED - Interpreter Ed Hardisty

GS - Would you give us your name, your age and where



you're from?

ED - His name is Philip Moses and age over 90 and come from Fort Wrigley.

GS - Could you tell us what you know about the signing of the Treaty in 1921?

ED - He can say a few words on what happened. He was at the Treaty time that day. Apparently this old man was there and he was the head man. He wouldn't accept the treaty because he was afraid that in the future, like right now, the land would be like cut off for the Indians.

GS - Do you know of anybody who sign the Treaty?

ED - He didn't see anybody signing any paper or making a cross or alphabet or any paper at all.

GS - How old was he at that time?

ED - He was around about 30. He was married by then but he didn't have no children yet.

GS - Who was the chief of Fort Wrigley at that time?

ED - The speaker was the old man Moses, but he didn't want ... [to be] chief ... so Yendo, he was the only chief.

GS - Julian Yendo was the head man, was that correct?

ED - They had quite a meeting at the Treaty day, the old man was quite aware of something in the future was going to happen, ... but the bishop was there talking to the Indians into taking the Treaty. What they said was that they won't be anything change as long as the sun rises in the East and sets in the West and as long as the river flows. [They were also to] get a boat load of groceries or merchandise, whatever, that was to last for the whole year.

The following quotes are taken from the transcripts of the court proceedings in the matter of an application by Chief Francois Paulette et al., to lodge a Caveat with the Registrar of Land Titles for the Northwest Territories. In the proceedings several Dene leaders were called as witnesses. Mr. Gerald Sutton, legal counsel for the Dene asked the following question of each of the Dene witnesses.:

"To your knowledge and belief have the Slavey (Dene) people of (here the name of the witness' community is given) ever sold or surrendered their land?"

Several witnesses responded to that question. Their answers:

"One of the first persons to sign the treaty from Hay River was Chief Sunrise, and since that time I have no knowledge of the Indian people ever selling their land to anybody."<sup>77</sup>

"As far as I know, the government, it never did mention about buying land from the Indians."<sup>78</sup>

"No, at the time of the treaty they had a meeting for 3



days and he said they never mentioned the land, and that is why he took the treaty; otherwise he would not take the treaty. That is what he told me."<sup>79</sup>

"...nobody mentioned the land. It was a sort of peace treaty..."<sup>80</sup>

"[Interpreter talking] He says he remembers very well that land was never mentioned at the Treaty but there was a lot of talk about it just being a peace treaty. The money was given to them for a peace treaty."<sup>81</sup>

"No, they never mentioned anything about selling out ground."<sup>82</sup>

"From what I heard from old people, we never give our land for five dollars. We never did and we are not going to, and as far as we know, we will never give our land away. We are not going to give it up."<sup>83</sup>

"Was it your understanding that the Indian people of Fort McPherson were giving up or selling the land to the Government when they first took Treaty?"<sup>84</sup>

"No, no one knew."<sup>85</sup>

"No, from what I understand they never did."<sup>86</sup>

"When the people from Colville Lake first got their Treaty money, did Mr. Harris (1922) say anything about land? ... Did he say anything about reserves?"<sup>87</sup>

"No, he didn't say anything about this land, ... No, nothing..."<sup>88</sup>

## PEACE TREATY

### The Dene Version of Treaty 11

#### Preamble:

His Most Gracious Majesty George V, King of Great Britain, has sent a delegation, under the leadership of Commissioner Henry Anthony Conroy,<sup>90</sup> to Dene country to seek a treaty through which his subjects may travel peacefully<sup>90</sup> on Dene lands to seek minerals for Canada<sup>91</sup>.

His Excellency Bishop Breynat of the Roman Catholic Church, assisted Commissioner Conroy at the invitation of the government of Canada.<sup>92</sup> He has given his solemn word that the words and promises of the Commissioners of the Crown will be honoured by the government in Canada.<sup>93</sup>

The Dene leadership, through negotiations and discussion with their people, and with the interest and concern to provide their people with a more secure future, have been satisfied by the repeated statements of Commissioner Conroy and Bishop Breynat that this treaty:

- a) has nothing to do with The Land;<sup>94</sup>
- b) would not give Canada right to interfere in the internal affairs of the Dene<sup>95</sup>; and therefore
- c) has no bearing on Dene jurisdiction and governance over their territories;
- d) is a symbol of a nation to nation relationship between the Dene and the Crown..<sup>96</sup>

This Peace Treaty therefore provides as follows:

#### THE DENE AGREE:

1. to allow the subjects of King George to move peacefully on Dene lands to seek minerals providing their work does not interfere with the Dene<sup>97</sup>;
2. to meet with a delegation of the King each year to renew this treaty.

#### THE CROWN AGREES:

3. to protect the Dene against the invasion of White people on their hunting and fishing territories;<sup>98</sup>
4. to take care of the education of children;<sup>99</sup>
5. that medical services would be assured according to their needs;<sup>100</sup>
6. to come to the assistance of widows, orphans and elders;<sup>101</sup>
7. that the Dene would not be molested in the kind of life which the geographic and climatic conditions imposed on them;<sup>102</sup>
8. that the Dene would continue to assure their life and that of their families by hunting and fishing;<sup>103</sup>

/...

9. to supply the Dene with hunting and trapping supplies, including fishnets, bullets, food and other basic needs to go out on the land;<sup>104</sup>
  10. to provide the Dene with housing.<sup>105</sup>
- IT IS AGREED THIS TREATY WILL BE HONoured AS LONG AS THE LAND IS HERE, AS LONG AS THE GRASS GROWS, AS LONG AS THE RIVER FLOWS, AS LONG AS THE SUN RISES IN THE EAST AND SETS IN THE WEST, THIS WILL NOT CHANGE.

SEE APPENDIX "E": A PARADIGM TO HELP UNDERSTAND THE DENE VIEW.

#### DENE SELF GOVERNMENT

There have been several initiatives to define Dene self government. In 1979 the leadership of the Dene Nation decided to no longer boycott the territorial government. The transcripts of the discussion is attached as Appendix "G".

In 1982 the Dene Nation and the Metis Association published a document titled Public Government For The People of The North. The document recommends a process to bring about

"The establishment of a government in the style and tradition of the Dene... What is required, and what we are inviting is the active participation of all Dene and non-Dene residents of the north in the task of designing and creating the future Government of Denendeh."<sup>106</sup>

Public Government For The People of The North is provided as Appendix "H".

In 1984 the Western Constitutional Forum published DENE GOVERNMENT PAST AND FUTURE A Traditional Dene Model of Government And Its Implications For Constitutional Development In The Northwest Territories Today. The paper provides some clear statements on the traditions and current problems which face the Dene. DENE GOVERNMENT PAST AND FUTURE is provided as Appendix "I". The problems it presents have to be known and addressed in a concerted way by the Dene through their own government institutions if they are ever to be resolved. Anything less would be a continuation of the colonial administrations which have brought the Dene to their present state.

The relationships between the Dene and the governments of Canada over the past seventy two years have generated a complex socio/political reality. The impact of the schools, the churches, a foreign form and process of governance, and industry and commerce has had significant negative results on the Dene culture. In effect more than a billion dollars a year is being spent, according to policies which have a severe negative effect on the Dene and Inuit, to further Canada's interests for sovereignty in the North and wealth for the South.

Consider that until a few years ago all school programs were designed to remove the Dene children from their culture and immerse them into the Euro-Canadian/Industrial culture. The reader must recognize that this was done with full conscious intent on the part of the government and the churches. Some families in the North, as

down South, have stories of the early years where parents were told their children died and children were told their parents died. In that way children were kept from their families from a very young age until they were old enough to be married. In that way they were also kept from the teachings of their people about The Land and The Spirits.

In more recent times children would attend schools and spend summer at home. They were forced by the discipline of the school to behave according to the cultural expectations of the teachers and by the discipline of the parents to behave according to the cultural expectations of their people. They were shifted back and forth in this spiritually confusing and psychologically painful way over eight to twelve years until many of them gave up on both ways of life. Today, many younger Dene are very angry about their experiences in school. It is still the law of the land that children (including Indian children) must attend school, which for the most part provides no positive reinforcement to the Indian child as Indian.

We have seen, in a previous section, the intent that the governments and the Churches of Canada had with their social planning strategies. Today we are living with the results of those strategies. The young Dene drop out of school in droves. Less than three percent who enter grade one complete grade twelve. Behaviour which is considered criminal by both Euro-Canadian law and Dene law is much more common now.

The Churches intended to civilize and Christianize the Dene through the work of residential schools. They used fear and ridicule to push Dene children away from their own spiritual traditions. They still teach that Dene spiritual traditions are from the devil. In this way they have confused and debilitated many Dene spiritually. Yet, their approach is not successful in Christianizing the Dene either. The teachings of Old and New Testaments are not foreign to the teachings of the Dene legends. Today especially the older Dene who did not attend residential schools, who were raised on Dene teachings, do attend church when they can as they recognize common values, and beliefs; they recognize that ritual is merely cultural expression and adapt accordingly. As for the young and not so young who did attend residential schools, it is a rare occasion, such as a funeral, a wedding or a baptism, when they attend Church in any significant number.

Today, for the most part, government and Church strategies are still being implemented both through policy directives and funding. Although both government and Church make public statements of support for Dene rights, their organizational structures and the social processes, beliefs and personnel who try to implement them have been, for the most part, unsuccessful. How could it be otherwise? On the one hand we have people in positions of bureaucratic power who have no idea what it means to be Dene, and on the other hand some young Dene, supported by the government and Church whose main interest is to be successful as a non-Dene. The real spiritual leaders of the Dene still keep themselves away from any public involvement. The leadership of Dene knowledge is still



ignored by Church and State. The over-all effect in the Northwest Territories is a neo-colonial public administration.

The results of the current administration has not alleviated any of the problems which confront the Dene. For example the Territorial Department of Municipal and Community Affairs receives funds, from Indian Affairs, to deliver municipal services to Dene communities, but by policy they do not recognize the Chief and Council as legitimate governing bodies, even in those communities where the Chief and Council are the only governing body.

The socio/political structure (the schools, Churches and foreign government) has been funded with public monies to deny, by omission, individual Dene the experiences of strength (spiritual and communal), belonging, integrity, purpose and creative action through which the Dene, as a people, could continue to control their lands and resources. When these strategies and public funds are applied in that way to White people anywhere in the world they are denounced by other White governments as evil, and rightly so. It is time now that the Dene say that what the government of Canada and the Churches have consciously done to our people is evil. This evil has permeated institutions of government and church so that it is cloaked and presented as rational and even humane. Alternatively it is presented as necessary for the greater good, meaning, in this case, that the Dene are expendable. That is, it is necessary to displace the Dene for the greater economic and security good of the rest of Canada.

The results of the strategies, for the Dene, are displacement and marginalization. Younger Dene are becoming racist. Many Dene are ignoring the elders. Dene leadership is ignored by the government. Band Councils have very limited resources. The effects of the funding strategies go on and on.

Although there are some very serious personal and social problems among the Dene, they must not be brought forward as an excuse to disallow Dene self-government. Anything less than self government through which the Dene may resolve their own problems and heal their communities, will be a continuation of the colonial relationships which many view as a form of genocide.

Appendix "I" provides information on some of the needs with which the Dene are confronted. These needs have to be seen as urgent. Lives are at stake. Appendix "I" serves to reinforce the position that a further continuation of the present governing relationships, in Denendeh, will only continue to erode the social fabric of Dene culture.

In 1991 the Deh Cho Tribal Council adopted a position paper on a constitution for the Deh Cho Region. It is presented here as it was prepared for the Tribal Council to provide the Commission with the same information presented the same way it was to the Tribal Council.



## Introduction:

What is a Constitution?

People live in society in specific ways. They follow a code of conduct. They recognize each other as individuals with rights. They live together according to rules by which they discipline themselves for the good of all. They live according to their belief system. That way of being is organized. That way of being is how they are made; how they are constituted. That way of being is said to be their constitution.

The intention of a constitutional document is to define a social contract which maps out the jurisdictions whereby society governs itself. The document also identifies the jurisdictions which each "level" of society is responsible for. For example in the Canada Constitution Act 1982, the Federal Government is responsible for relationships with Indians; the Provincial Governments are responsible for municipalities; the Charter of Rights addresses the rights of individuals.

In Canada, we are bound, at present by constitutional obligations some of which are not written, and others which have been written and which now have generally recognized constitutional status.

In an oral tradition, the way of being is lived; it is not written down. Now, we are asked to define and write down our way of being; to write down how we will be in the future. These unwritten constitutional obligations stem from the obligations that aboriginal peoples have towards the land. This concept will be further discussed later in the paper.

Constitutional documents may, and/or, have been formulated, in the past, in several ways.

### 1. DEFINITION

Defining the way of being of a society which operates according to an oral tradition is one way by which their constitution may be formulated.

### 2. ORAL BI-LATERAL AGREEMENTS

A second set of constitutional obligations in Canada, are the treaties with Indian Nations. These oral bi-lateral agreements made by Indian leaders with agents of the Crown have been considered by some to be worthless and by others to be very powerful. There is dispute over some of the terms of the agreements. The conflict stems from the Crown's written version of the treaty. But, the very nature of treaty itself generates recognition of the sovereign status of Indian Nations.

### 3. PROCLAMATION

The first significant, written, constitutional document for Canada is the Royal Proclamation of 1763. As its' name implies, this document was a statement of the King. In it he instructed his subjects to not move into Indian lands until they had first signed treaty with them. This document is the basis which required British

subjects to enter into treaty with Indian Nations.

#### **4. UNI-LATERAL COLONIAL LEGISLATION**

In 1867, the parliament of Great Britain passed legislation to provide Canada with a constitution. The British North America Act defined the political structures and jurisdictions of governments in Canada. It is this document which established the federal and provincial governments in Canada. This process whereby a colonizing legislature defines the social contract of a state through uni-lateral legislation is another means of formulating a constitutional document.

#### **5. CONSULTATION, NEGOTIATIONS, COMPROMISE**

In 1982, the Parliament of Great Britain, following a request from the Parliament of Canada, and after extensive consultation with the government of Canada and the leaders of Indian Nations amended the BNA Act, added section 35 and an amending formula, and sent the Canada Constitution Act 1982 to Canada.

In 1992, the process to divide the NWT will begin. It is planned to be complete by 1997. This process has placed Denendeh in a position requiring the formulation of a constitution which will state the basis on which we will live together in the future. To meet that objective, the government of the NWT, the Dene Nation, the Metis Nation, the Inuvialuit and the interests of women in Denendeh have established a Constitutional Development Commission for Denendeh.

The role of the Deh Cho Regional Council in this process has been to consult with the leaders and elders of the region and to formulate a position paper stating the regions' constitutional interests.

Members of the Deh Cho Regional Council are the Dene Councils of Wrigley, Fort Simpson, Jean Marie River, Nahanni Butte, Trout Lake, Fort Liard, Fort Providence, Kakisa and Hay River/West Channel; the Metis Locals in Fort Simpson and Fort Providence, and the municipal councils in Fort Simpson, Fort Liard and Fort Providence.

#### **Summary of General Statements of Position:**

The following are general statements of position by member councils received to December 10, 1991. Councils not mentioned below have not responded to date.

#### **METIS LOCALS**

The Metis Local in Fort Simpson has indicated that they support the position of the Metis Nation. They have indicated the need for some form of guaranteed representation for Metis people.

#### **MUNICIPALITIES**

The Hamlet Council in Fort Providence recognizes the Chief and Band Council as the primary local government body. They indicated that the Providence Hamlet should operate under the direction of the Chief and Council.

The Village Council in Fort Simpson is opposed to this entire process and the division of the NWT. Council's concern is that the cost of division will impinge on the municipal budget in future years.

#### TREATY DENE COUNCILS

The Band Councils from Wrigley, Fort Simpson, Jean Marie River, Trout Lake, Nahanni Butte, Fort Liard, Fort Providence, Kakisa and Hay River have all stated their intention to keep the Treaty.

The Dene will seek the recognition of a Dene government for Dene people under section 35 of the Canada Constitution Act 1982.

The Dene have also indicated that they will continue to support the direction for self government as given by the 1988 Hay River Dene National Assembly Motion number 15, the Dettah Motion, the Bell Rock Motion and the motions of the Deh Cho Regional and Tribal Councils on self government.

## HISTORICAL BASIS OF PROPOSED POSITION ON A CONSTITUTION FOR DENENDEH

### Two Possible Legal Streams:

There are two possible legal streams which might serve as the basis of the Denendeh Constitution. One constitutional option is based on the continuation of the relationships which have been developed by the application of the NWT Act in the North. That option would formalize the existing government of the NWT.

The other constitutional option is based on the definition of aboriginal and treaty principles and jurisdictions which would be entrenched in section 35 of the Canadian Constitution.

As indicated in the summary statements above, the majority of the Councils which make up the membership of the Deh Cho Region support the second option.

### Minority Rights:

It is commonly held, however, that the rights of minorities be recognized and accommodated. Indeed, the right of the individual to life and liberty is evident throughout many of the Dene teachings.

### Oral History on Treaty:

During our consultations, the statements of elders with regard to the treaty negotiations, in 1899 and 1921, have raised clear signals of the sovereignty of the Dene. Their accounts of the negotiations and the oral agreements adopted, speak clearly of a treaty negotiated to provide for peace and friendship.

Affidavits were signed in 1937 by Dene, Metis and White people who were present at the negotiations to substantiate the oral history recounted by the elders today. The affidavits state clearly that "...nothing would be done or allowed to interfere with their way of making a living..." The oral history in effect substantiates that the Dene never surrendered their sovereignty or their lands.

The Dene Councils make up the majority of the membership of the Deh Cho Regional Council. Their position is clear. Consequently, this paper addresses the parameters of aboriginal jurisdictions as they flow from the customary land use patterns of the Dene.

### Present Administration of NWT Unconstitutional:

In the light of those historical and legal realities, and substantiated, since 1982 by section 35 of the Canadian Constitution, the present concepts of Crown Lands and Commissioner's Lands in the NWT, as well as the NWT Act, the Indian Act and the Comprehensive Claims Policy are considered to be unconstitutional in that they contravene the originally negotiated

relationship between the Dene and the Crown.

The application of the above concepts and legislation flow from that period of Canadian History prior to 1982 when Parliament was considered, by Canadian law, to be supreme. Since 1982, with Canada accepting aboriginal and treaty rights at a constitutional level, it does not make any logical or legal sense to maintain a policy which demands that those constitutional rights be ceded to the Crown, or to continue administering the Indian Act and the NWT Act which have the effect of denying treaty and aboriginal rights. According to the Indian Act, an Indian is a ward of the Crown. The NWT Act imposes government process which changes the way Dene are organized and make governing decisions. These Acts contravene treaties eight and eleven as negotiated and agreed to orally.

To entrench the relationships inherent in the NWT Act would, in fact if not in law, negate the treaty as well as aboriginal rights. In effect, it would negate section 35 of the Canadian Constitution where the Dene and Metis of the NWT are concerned. It would mean that for Denendeh, section 35 would not be based on the aboriginal culture, but on colonial legislation. It is with these considerations in mind, and following the direction given, during the negotiations of the treaties, that this paper seeks to define the relationships which would ensure the entrenchment of the inherent rights of the aboriginal peoples, including self government according to aboriginal principles and political structures.



## STATEMENT OF PRINCIPLES

The following principles are based on statements of elders and leaders with reference to the history of the people on the land, and constitutional considerations. These principles are to be considered as representative of constitutional principles which flow naturally from aboriginal culture. They should not be considered to be complete.

1. We are people whom the Creator has provided with teachings to live by.
2. The Universe (including our land) is the teachings of our Creator made manifest.
3. We are required to seek the teachings of the Creator in all directions of our land.
4. The land is one of the teachers of the Creator.
5. The land provides the resources of our way of life.
6. People must adapt to the teachings and the resources as provided by the land and the Creator in a natural way.
7. People will govern themselves so that the land will be able to continue providing for future generations.
8. The historical and contemporary land based experiences of Dene culture will continue to provide for the social and political structures through which Denendeh will be governed.
9. Treaties eight and eleven shall be upheld as agreed to in the oral negotiations.
10. The rights and interests of aboriginal people shall be defined by them within the evolving confines of aboriginal land based customs.
11. The rights of the land to provide for future generations shall take precedence over perceived need of the present.
12. Aboriginal sessional rights shall be retained by aboriginal peoples.

## CONSTITUTIONAL PARAMETERS FOR DENENDEH

Given the time constraints, it is unlikely that anyone expected that this position paper would define a constitution for Denendeh. However, the following draft constitutional outline is provided as a working paper based on Dene customs.

This region does recognize that a constitution for Denendeh will have to provide for the interests and rights of all residents.

The interests, however, of the Band Councils which make up the majority of the member councils of the Deh Cho Region, have clearly stated their interest in the development of a Dene government for the Dene.

In that regard, the land base of the Dene is of paramount importance. It is still the considered and firmly help position of

the Dene that they have never surrendered their land base to anyone. In that regard, all non-Dene who have lived on and enjoyed Dene lands, have done so by the good will of the Dene. That good will appears to be rapidly dissipating however.

The elders have stated over and over again that the Treaty did not provide government with any right to change the Dene way of doing things in any way, nor did it surrender land. It is logical therefore to conclude that although there is a constitutional relationship between the Dene and Canada through the treaties, (as oral agreements), the governing of the lands in Denendeh is the jurisdiction of the Dene and all non-Dene living in Denendeh are expected to adapt to the Dene mode of government.

It is expected, then, that the Constitutional Commission, in its deliberations on principles and constitutional parameters will honour, finally, this historical Dene perspective on treaty and lands as it is still consistently presented by elders and corroborated by legal affidavits presented in the court case of Chief Francois Paulette et al and Her Majesty the Queen.

With those provisions in mind then, the Deh Cho Regional Council presents the following outline as a draft working paper to assist the Commission with its work.

## Section 1.

### GENERAL

- 1.1 The Dene constitute a nation, born of a common heritage, within a distinct territorial land base, and having a distinct culture, including laws, beliefs and languages.
- 1.2 The traditional Dene lands extended as follows:  
To be defined if necessary.
- 1.3 The lands used by the Dene today, as based on our customary use extend as follows:  
To be defined.
- 1.4 The Dene culture is based primarily in the use of the lands defined above. Dene land use is based on traditional and contemporary technologies, and governed by Dene beliefs, customs, and laws.
- 1.5 The languages of the Dene are the official languages of the nation. They are Chipewyan, Cree, South Slavey, North Slavey, and Gwich'in. (These should be written in each respective language.)

## SECTION 2.

### ORGANIZATIONAL ORDER

- 2.1 The organizational order of the Dene is based on the traditional land use practices and jurisdictions are shared at the level of the extended family, the band, the region and the national level.

- 2.2 THE EXTENDED FAMILY, within the Dene culture, is the fundamental economic, social, political and cultural unit of the nation.
- 2.3 THE BANDS of the Dene Nation are structured by the coming together of several extended families to work together towards their common good.
- i. The Band shall be governed by a council of Elders of the extended families, and by the Band Council which is made up of the Chief and Councillors.
- 2.4 THE REGIONS of the Dene are structured by the coming together of the leadership of several bands having a common language, to work towards the common good at a regional level. Each region shall maintain a regional council made up of the Elder and the Chief of each of the Bands in the region.
- 2.5 THE DENE are structured at the national level to provide for a Dene National Assembly, an Assembly of Elders, Leadership meetings, an Executive made up of a National Chief and five National vice-Chiefs, an administration committee made up of the executive and five Band Chiefs, one to represent each of the five regions of the Dene.

### SECTION 3.

#### THE LEADERSHIP

- 3.1 The Dene leadership is composed of the Elders, the other natural leaders of the extended families, their representatives on the Band Councils, the elected Band Chiefs, the National Chief and the five national vice-Chiefs.
- 3.2 Dene laws provide for men and women to have specific spheres of responsibility and authority.
- 3.3 IN THE BAND, each extended family selects and appoints its leader to the Band Council.
- 3.4 THE CHIEF of the Band is elected by the membership of the Band by secret ballot.
- 3.5 THE ELDERS of the Band recognize each other.  
The Elders meet in council at the Band level.
- 3.6 AT THE REGIONAL LEVEL, each Band Chief, and one Elder from each Band, meet in council to deal with regional issues.
- 3.7 AT THE NATIONAL LEVEL, each Band selects a delegation, including the Chief and an Elder, numbered according to the population of the Band, to represent their Band at the National level.
- 3.8 The National delegates elect a National Chief and five National vice-Chiefs, by secret ballot, to represent the Nation at a national and international level.
- 3.9 THE REGIONAL ELDERS assemble at the National level, to meet family, band, regional and national needs in all

areas of the people's endeavours.

#### SECTION 4.

##### OBJECTIVES

- 4.1 To uphold the individual and collective rights and interests of the Dene.
- 4.2 To develop, discuss and promote policies for the good government of the Dene.
- 4.3 To conduct, foster and support programmes and policies for the spiritual, economic, social, educational, health and other cultural benefit of the Dene.
- 4.4 To provide the Dene with a strong voice both nationally and internationally.
- 4.5 To co-operate with other nations of similar or friendly purposes while protecting the basic human rights of minorities.
- 4.6 To provide for the guardianship and management of the environment in a manner consistent with constitutional principles.

#### SECTION 5.

##### JURISDICTIONS

- 5.1 Extended family jurisdictions:
  - i The extended family retains its customary land base.
  - ii. All activities and uses of the extended family's customary land base are shared between the extended family and the Band.
  - iii. The extended family maintains its jurisdiction over the family's culture, social development, economic activities within its customary land base.
  - iv. Membership in the Dene Nation is decided by the extended family. Whoever is born into or adopted by the extended family is a full member of the Dene Nation.
  - v. Dene laws specific to the extended family remain the jurisdiction of the extended family.
- 5.2 Band jurisdictions:
  - i. The customary land base of the extended families is protected and administered by the Band.
  - ii. Disputes within a family, and between families are resolved by the Band.
  - iii. The Band will provide for the education of its members.
  - iv. The Band will provide administration and

development work to fulfil the extended family's jurisdiction over culture, social development, and economic activities.

- v. The Band will maintain the records of membership by accepting the decision of the extended family and entering members into its membership register.
- vi. The Band will record and maintain the code of laws of its extended families.
- vii. Delegation of jurisdiction to region or national level.

5.3 Regional jurisdictions:

- i. All matters pertaining to a region, which are not manageable at the Band level are delegated by the Band Council to the regional level.

5.4 National jurisdictions:

- i. All matters of a national nature which are not manageable at the regional level are delegated by the Regional Councils to the National level.
- ii. International relations is maintained at the national level.  
(Dene Nation with Canada; Dene Nation with other State governments; Dene Nation with other Aboriginal Nations.)
- iii. Treaties are negotiated, protected and maintained at the national level.
- iv. Economic ventures of National significance are administered nationally.



PART II PROVISIONS GOVERNING THE NATIONAL LEVEL OF THE  
DENE NATION

SECTION 1.

ACTIVE MEMBERSHIP

- 1.1 All individuals registered on a Band membership register and being eighteen (18) years of age have full rights in the Dene Nation
- 1.2 Voting in elections whether locally or nationally is restricted to individuals who are living within the customary land base of the Dene.
- 1.3 Nothing in these provisions shall be interpreted to deprive any resident descendent of the Dene, of membership in the Dene Nation, who previously enjoyed full or active membership either as a Treaty Indian under the Indian Act or as a Declared Dene.

SECTION 2.

ASSEMBLIES

- 2.1 A National Assembly of the Dene Nation shall be held at least once in each calendar year.
- 2.2 The National Assembly shall be held at a time and place to be fixed by the preceding National Assembly.
- 2.3 Provisions for regional, band and family assemblies are the province of the leaders at those levels of Dene organizational structures.

Quotations from Elders:

"Naha nie was the leader at one time. He planned fishing and hunting trips for the men. Food was stored until he got the people together and talked to them. Then, he distributed the food equally to the people." Jonas Marcellais

"The hole on top of Tsa Koe (Nahanni Butte) is filled with cement. The cement is detrimental to the land. Landslide occurred as a result." Jonas Marcellais

"The eldest man led the people; he planned, made decisions. Others consulted with him prior to using the land. The land determined how the Naha people governed themselves and behaved on the land." Jonas Marcellais

"People shared food." Nellie Konisenta

"They had no chief in the past. The eldest man was the one who told the people what to do. People advised him where they were to hunt and trap and got his consent. Family groups took care of themselves. They put up a cash for the winter for themselves." Liza Betsaka

"Bobby Babiche was the leader/boss of the upriver people. He advised White people as they went up the Nahanni River. ... Hold on to the treaty." Frank Vital.

"We lived well in the bush. As we travelled, we stopped on the river at the tent camps with dry meat from moose drying. ... The elders said that what they fixed up (in the treaty) is to last as long as the river does not flow back and as long as the sun shines." Sarah Hardisty

"Ehtsie Norwegian did not want to take the treaty. He wanted his way. They had a hard time talking." Henry Ekali, 103 years old.

Note: Both Willie Minoza and Henry Ekali made reference to a paper written by Bishop Breynat which recorded the Dene version of the Treaty. Both men mentioned that when Dene leaders asked about the paper they were told that it was lost or that it burned.

"They lied to us, the paper burned, they say, somewhere down South." Henry Ekali

Betty: "Do you think they should let the treaty go?"

Henry: "No. We can't let it go."

"When our elders were alive, everything that we used in living on the land was good. These White people come among us and have closed

everything on us. It seems they are messing things for us, eh? It seems to be going that way. We have become elders and I wonder how it will be for our future generations to survive? How will they make a living for themselves? Everything is becoming like the White man's style. Things like alcohol, smoking drugs amongst our young and it isn't like the days of our elders. Children grow up and learn to read and write and are beginning to read bad books.

... I agree (that we keep the treaty). It was true what Ehtsie Norwegian was standing on towards the end. They said whatever you ask for, no matter if the White person has to pack it on their back they will back pack it to your home. ... Ehtsie Norwegian would not agree to the treaty for four days because eventually the White man will want to start to work evil and make it miserable for us Dene. ... So they gave the money to Williamiah's dad. ... Later, Ehtsie Norwegian took the treaty and said that this treaty money is never to be released and to be used forever. ... Before the White people arrived, our elders were knowledgeable in spiritual ways. In the Spring people arrived in Simpson and drum danced." Gabe Sanguéz

"Elders that were good moose hunters, things went according to what he said. Whatever he suggested and planned, things went his way." Gabe Sanguéz

"My father provided well for me and I have survived well off the land to this date. ... Think about the Creator. The land is important. I have not made money off the land. I have faced people honestly and have been kindly towards all people." Wilson Pellissey

"We can't let go of the treaty. We can't sell the land. If we let it go it will put us in a poor situation. We have to hang onto the land with our hands and in our hearts, and if we are of one same mind, it will go our way. " Wilson Pellissey

"There was always one that was a leader (boss) and whatever you had to do, where you set traps, where you were to hunt, whoever was to go to a certain place to hunt, they went to see him and told him where they planned to go and then if he agreed, then they went there." Paul Ekenale

"If they (Chief and Council) asked for advice (from the elders), that will be good." Paul Ekenale

"You don't walk away from your elders. You take care of your elders, chopped wood for them and put it in the fire for them. Doing this gave you a long life they advised us." Paul Ekenale

"In the past, elders that thought things through good were the leaders. They didn't choose leaders like they do now. ... When there is a meeting, the Chief and Councillors should return with the papers and then go visit people and tell them this is what is discussed; and the elders could think it over and then we could fix things up. That is possible." Paul Ekenale

"They used to ask me to come out and come to the drum dance as it was a lot of fun. I said -and my mother is dead- I could not leave while my dad is sleeping, I can't do that. In the day when I am sleepy, my father asks me why. So, I tell him what the girls were telling me, so I could not sleep. My girl, he said, those young girls are nice and have no dirt upon them. In the near future they will pass on and only you will be the only one left. I wondered what my father meant. Now, they have all passed on. I am the only one left alive grieving alone without an aunt or uncle in Simpson. ... I work for my children. I fix hides, I sew, I do not cook for myself. My son cooks for me and cleans house for me. ..." Helen Ekenale

"The constitution is based on the keepers of the land for generations not yet born. Mother earth feeds, clothes, shelters and protects us. The constitution has to be based on the memory of the generations coming behind us." John Thomas

"Each culture is given land, a language and a ceremony. The language is sacred, it is from the Great Spirit. The ceremony goes with it and the land. All cultures are sacred. A man is a human being. We feel and think with our hearts, not just our minds. Share together." John Thomas

"We are the land, the land is us. Our grandfathers and grandmothers are buried in the land." John Thomas

"White people were given the bible to know God's teachings, we were given the land; we were told to seek the Creator's teachings in all directions of his creation. That is why Indians pray to the four directions." Stanley Isaiah

"The Creator made us. We are hear for a reason." Jim Lamalice.

"Children were raised according to knowledge of the weather, ... We used to walk with packs to Buffalo Lake. It was hard. I did it for 56 years. Our father taught us to work for ourselves. We lived off the meat from the land." Jim Lamalice.

"My father taught me to never hit my children with a stick. He taught me to take good care of my woman; to never hit her." Jim Lamalice.

"Chiefs should be dressed so that they are recognized, respected. ... Men hunted and trapped. They were their own bosses. The Chief told us where to trap." Jim Lamalice.

"Women looked after the home and children and used snares near the camp for food. Women were the bosses of their children and home." Jim Lamalice.

"Whoever hunted and killed moose, shared the meat." Jim Lamalice.



"Before, if someone abused alcohol, the Chief talked to them." Jim Lamalice.

"The Chief was a good hunter, a good provider." Jim Lamalice.

"The elders used to talk to the people. The children were quiet." Edward Diamond C.

"When I remember those days, none of the elders' words were written down. You lived according to their advice as to life on the land. The elders were advisors, not the boss." Edward Diamond C.

"I lived in a tent all my life, except for the last four years." Lucy Thomas, 80 years old.

"Things should be left as they were created, they should not be tampered with." Lucy Thomas.

"Spiritual people went into the mountains to seek vision and to find out why the White people were bothering our land. ... Mon Seigneur Breynat frightened Pierre Lefoin into signing the treaty. He told our grandfathers that in the future when a lot of White people come into our land the Dene will become poorer. It seems it is like that this day." Willie Minoza

"The written version of the treaty is not what the people agreed to. The treaty was not to cede land, but the people agreed to peace and friendship." Willie Minoza

"A long time ago, the Dene did not go according to the books. They taught one another to work and fish and hunt on the land." Vital Brule.

"Welfare did not exist. No one lived in the communities, everyone lived in the bush on the land." Vital Brule

"In the past, there were no hunting and trapping restrictions." Vital Brule

"People shared hunting, trapping and fishing areas on the Horn Mountain. Everyone respected one another, helped one another and shared food." Vital Brule

"White people were allowed to hunt and trap amongst the people. There was no animosity." Vital Brule

"My grandfather told me that the people said no to treaty because they thought the five dollars was for the land. It was the priest that fooled the Dene. The people did not take the treaty to cede the land, but for peace and friendship, and that every year they were to shake hands as a reminder and to be given five dollars, and it was not for the land. So, they all signed their names. Now, they must not change things. They have to stand by the treaty as agreed



to. If we continue by the treaty, it will be good." Vital Brule

"The Dene lived well according to good land use. The elders taught you well how to live on the land to conduct yourself safely." Vital Brule

"The Dene prophet advised people on the future. He prayed for people and gave people advise to live a good life. The prophet used to feed the fire for people and he had a lot of songs. He would drum for the people then feed the fire. Then, the people would eat in a certain area. He drums and sings. Then one by one people begin to dance. He had good songs. His name was Francis. He was the first husband of Marie Louise Sanguet's mother." Vital Brule

"Now, they keep talking about selling the land. We can't do that. What will we live on? ... We are born here. We can't go anywhere. We have to stay here on our land. If we well our land, our children, our grandchildren will be in a bad situation." Mary Agnes Bonnetrouge

"The children who are growing up should be able to be their own bosses." Mary Agnes Bonnetrouge.

"The Chief and Council should do home visits when they have the time. The Dene should have their own government. Leadership should not change. Elders should have a counsel." Mary Agnes Bonnetrouge.

"As long as the sun does not turn back and the big river does not flow back, the treaty will never change." Willie Minoza

In January 1993 all the Chiefs of Denendeh met in Yellowknife and set up a committee to study and recommend a new constitution for the Dene Nation. The committee worked for four months. The discussions and educational process the committee went through during that four months period brought all members to the common position that a constitution which paralleled the parameters outlined in the position paper, provided above, would be the most beneficial to the survival of the Dene as a distinct people.

The politics of land claims and the accompanying monies prevailed with three of the five regions which originally made up the Dene Nation. However it is still within the government of Canada's legal base and financial power to assist the Dene to heal their communities and consolidate their strength. To bring this about, however, would take a serious public education campaign in Southern Canada. The Dene Nation undertook such a campaign during the debate on the MacKenzie Valley Pipeline. It could be done again to make possible Dene self government.

The constitutional parameters outlined in the Deh Cho paper would be a good starting place to establish common understanding of Dene reality. However since 1921 the Dene have also maintained a Chief and Band Council. These are still able to operate according

to custom. They have not been brought under the provisions of the Indian Act.

The history of the Dene over the past hundred years, however, has had its impact and many people appear to be fearful of taking too strong a position. Serious apprehension exists in all Dene communities about the potential violent responses from government agents should the Dene take legal initiatives to protect their lands from government policies designed to alienate their lands to third party interests and/or departmental spheres of power.

#### PEACE ORDER AND GOOD GOVERNMENT

The Government of Canada's concept of peace is intimately tied to military order. Good Government is seen as government according to the Napoleonic code, parliamentary structure to generate conflict and stress within the ranks of the parliamentarians, Euro-Canadian processes of decision making and values for Quebec and British Common Law, parliamentary structure, Euro-Canadian processes of decision making and values for the rest of us.

For the Dene the above option has meant disorientation, confusion, lack of control over government structure and process, displacement from customary land use base to government controlled communities, dissolution of customary social and political order, weakening of economic and spiritual ties to The Land, Dene laws, the teachings and the Creator. This has resulted in opening the Dene to the onslaught of what the Catholic Church calls the Cardinal Sins; to the onslaught of what the Dene spiritual leaders called disease. It is true what the Dene prophets foretold: Strangers would bring sickness among us. Today our spiritual leaders tell us that two things are killing the Dene faster than anything else: alcohol and hateful thoughts for others.

We believe it is God's will that we exist as Dene; in a way of life which provided for good people to live together in harmony with each other and with The Land. Today we are suffering from the good intentions of governments and Churches from other parts of the world. How true the words of (I think it was) Theresa of Avila who said: "The road to hell is paved with good intentions". If a person is not Dene how can they possibly know what is good for the Dene? They cannot.

Good government for the Dene will bring peace back into the families and communities of the Dene. Good government for the Dene will be government according to the needs of the Dene and the will of The Land and the Creator as understood and lived by the Dene. Good government for the Dene will be government according to Dene law, social and political structure and economic activity which honours the rights of The Land and the responsibilities of the Dene to live according to the will of the Creator.

Until the above concepts are made reality again, as they once were, the Dene will continue to suffer under the Dominion of foreign interests and governments; the Dene will continue to live under a state of seige. Until the Dene govern themselves diseases

such as alcoholism, sexual abuse, abuse of elders, and other forms of criminal behaviour will continue. Until the Dene govern themselves there will be no good government and no peace among the Dene.

Appendix "E" provides a paradigm which displays in a graphic way the understanding of the relationship between the Dene and Canada as understood by the Dene. The Peace Treaty which the Dene entered into with the Crown recognizes the sovereignty of both parties within their own territories; it recognizes the reality of each others existence and needs; it recognizes the potential for each party to assist the other in meeting their needs through a fair trade of access (without interference to Dene way of life) to Dene lands for minerals in exchange for benefits, as a treaty right, from the Crown to citizens of Denendeh.

The Treaty constitutes a social contract between the Dene and Canada which the Dene have upheld at great expense to their social, political, spiritual and economic life, and which the Crown has breached at every turn to further its secret intent to acquire complete dominion over Dene lands and lives<sup>107</sup>.

#### CONCLUSION

The Treaty is evidently an agreement of significance to the Dene. In as much as it was sealed over the years by annual renewals of the agreement to maintain the peace, it is still binding as far as the Dene are concerned. According to the Dene belief and practice, the sealing of the Treaty is conducted before the Creator in the form of a hand shake which is given to the agent who makes the treaty payment and the RCMP who witnesses the payment on behalf of the Crown.

The Treaty, as far as the Crown is concerned, appears to be a document through which the Dene have ceded their lands and rights that flow from the land; a document which gives the Crown sovereignty over Dene lands. Yet, the Crown also wishes to remove from the relationship with the Dene any ongoing uncapped costs associated with promises made during treaty. This is evident in the Comprehensive Claims Policy which the Crown uses to certify its sovereignty. At the same time the Crown promises some other benefits, but these would have the quality of benefits of policy as opposed to benefits of treaty. The evident difficulty here is that policies are made, changed, or entirely deleted in a unilateral way by governments. Treaties are constitutional agreements which require the agreement of both parties to change. The Dene Nation is now composed of the Deh Cho and Treaty 8 regions in the Northwest Territories. The Gwich'in have settled their claim with the Crown. Chief Grace Blake of Arctic Red River has stated clearly to the committee established to review and recommend a new constitution for the Dene Nation that Gwich'in elders had not been informed about the impact of the claim on Treaty 11.

Although elders and some of the smaller communities in the Sahtu and among the Dogrib still want to keep Treaty, those regions have taken formal positions to pursue the Comprehensive Claims Process.<sup>108</sup>

Only the Deh Cho region composed of ten Dene communities remain firm in their position on keeping the Treaty and seeking a constitutional relationship with Canada which will recognize Dene aboriginal title to their lands and provide for Dene law and custom to stand as the basis of government in the Deh Cho.



#### END NOTES

1. Victor Lafferty, translator during treaty negotiation in Fort Providence in 1921, quoted here from his testimony to the court in the Paulette case. p. 360.
2. Andy Norwegian, Dene curriculum development specialist with the Deh Cho Divisional Board of Education, personal communication, November 23, 1993.
3. Philip G. Howard, A Dictionary of the Verbs of South Slavey, Department of Culture and Communications, Government of the Northwest Territories, 1990, p. 757.
4. Keren Rice, A Grammar of Slave, Mouton de Gruyter, Berlin - New York, 1989. pp. 425-6.
5. George Blondin, Dene elder, personal communication. 1979.
6. Inspector C.C. Parker, Report: Trip to Mackenzie River District 1928, Office of Inspector of Indian Agencies, Department of Indian Affairs Canada, R.G.85 Access...64/128, vol 477, file 6327, p. 4.
7. Johnny Klondike, Dene Elder, Fort Liard, Deh Cho Tribal Council Archival Document, Interviewed December 3, 1991.
8. James Antoine, Personal communication, June 1989.
9. Leo Norwegian, Personal communication, 1992.
10. C. Bourget, Douze Ans chez les Sauvages, Sainte Anne de Beaupre, P.Q., 1938, quoted by Rene Fumoleau, omi, As Long As This Land Shall Last, McClelland and Stewart Limited, pp. 98-99.
11. George Blondin, When the World Was New, Outcrop, 1990 pp.172-6.
12. Cecile Antoine, Personal communication, 1973.
13. Willie Okemow, Personal communication, 1972.
14. Deh Cho Dene customary practice.
15. Harry Simpson, Dogrib elder, Personal communication during workshop on Dene Leadership, March 9-13, 1992.
16. Rene Fumoleau, omi, As Long As This Land Shall Last, McClelland and Stewart Limited, p 320.



17. The reader is referred to the section on Government and Church Interests in Denendeh and the section on Self Government for substantiation of this statement.
18. Honourable Mr. Justice W.G. Morrow, Application of Paulette et al to apply caveat on Dene lands, Judgment of the 6 September, 1973. Clause 4. Ordered and Adjudged.
19. Bishop Breynat, omi, Affidavit of November 27, 1937, Exhibit No. 56, Paulette et al.
20. Georges Erasmus, Drum Beat, Assembly of First Nation. The above book is not available to the author at this time, however, according to Bill Erasmus similar information is provided by Georges Erasmus in the Forward of Drum Beat.
21. Affidavit signed by Bishop Breynat November 26, 1937.
22. Gabriel Breynat, omi, Cinquante Ans Au Pays Des Neiges, I, Chey les Mangeurs de Caribou, Fides, 1945, p. 204-5.
23. Ph. I. Andre-Vincent, o.p., Bartolome de Las Casas, prophete du Nouveau Monde, Librairie Jules Tallandier, 1980. p. 242
24. Sir John A. MacDonald Personal letter to Mr. Rose, See The John A. MacDonald Collection, micro-film volume 526, letterbook 23 for July 1884 to July 1886.
25. Comprehensive Claims Policy, 1987, Self Government Sector, Department of Indian Affairs and Northern Development, pp 6 & 9.
26. Green, L.C., The Law of Nations and The New World, The University of Alberta Press, 1993, p. 4.
27. Ibid. p. 18.
28. Sir Jeffrey Amherst, postscript of a letter to Bouquet, Francis Parkman, The Conspiracy of Pontiac and The Indian War after the Conquest of Canada. Vol. II, Boston, Little, Brown, and Company, 1933, p. 44-45.
29. Francis Parkman, The Conspiracy of Pontiac and the Indian War after the Conquest of Canada. Vol. II, Boston, Little, Brown, and Company, 1933, p. 45.
30. Ibid. p. 100.
31. Royal Proclamation, 1763, L.C. Green & Olive P. Dickason, The Law of Nations and The New World, The University of Alberta Press, 1993, p. 100.

32. Petition of British merchants in Quebec in 1774. Canadian History in Documents, J.M. Bliss, editor, Toronto, The Ryerson Press, 1966, p. 6.
33. See the Quebec Act 1774.
34. Royal Proclamation of 1763.
35. L.C. Green, The Law of Nations and The New World, The University of Alberta Press, 1993, p. 18.
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37. Louis Norwegian, Paulette et al, Transcripts of the court proceedings, p.136.
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39. Centre for Treaty Advocacy, The Buffalo Jump and The Conservative Agenda, Jan. 17, 1990. p. 2-4.
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43. E. Deville, Surveyor General, Letter of instruction to S.D. Fawcett, survey of settlements on the Athabasca, Slave and Mackenzie Rivers. April 17, 1913.
44. S.D. Fawcett D.L.S. letter from Fort Providence 20th April, 1914.
45. S.D. Fawcett, Report to Department of the Interior, Feb. 12th, 1914. p.1
46. Acting Controller, Department of the Interior, 15th Sept. 1920 to W.W. Cory, Deputy Minister of the Interior.
47. Gliddon, Assistant Controller, Department of the Interior, Memorandum to: J.P. Dunne, Secretary, North West Territories, Department of the Interior. 13th April,

1921.

48. P.C. 3499 Certified copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 4th January, 1918.
49. Deputy Superintendent General, in a letter to Mr. Cory, Deputy Minister, Dept. of the Interior, dated May 27, 1913.
50. Rene Fumoleau, omi, As Long As This Land Shall Last, McClelland and Stewart Limited, p. 153.
51. Bishop Tache, Vie De Mgr Tache, Archeveque de St-Boniface, par Dom Benoit, Librairie Beauchemin, Montreal, 1904, p. 183-184.
52. Father Lou Menez, omi, in conversation with Rene Lamothe pointed out that the Dene did not have a civilization because there are no physical manifestations of their accomplishments such as buildings and roads.
53. A common saying among French Canadian missionaries to French speaking catholics in Western Canada.
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55. Vital Grandin, letter dated Pontmain, 17 Janvier 1878, Sir John A. MacDonald Collection, micro-film vol. 91 p. 35420.
56. Vital Grandin, Letter to M. Langevin, C.B., Ministre des Travaux Publics, Ottawa, 4 Sepember 1879. Sir John A. MacDonald Collection, micro-film vol. 91, p. 35416 and p. 35419.
57. John A. MacDonald, 1856 letter to a Lower Canadian journalist. Canadian History in Documents, 1763-1966, J.M. Bliss, Editor, The Ryerson Press, Toronto, 1966, p. 96.
58. Albert Lacombe omi, quoted by Rene Fumoleau, omi, As Long As This Land Shall Last, McClelland and Stewart Limited, pp.66-67.
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60. Gabriel Breynat, omi, Vicaire Apostolique du Mackenzie, Cinquante Ans Au Pays Des Neiges, Fides, 1945, p. 193.
61. Ibid. p. 190.
62. Rene Fumoleau, As Long As This Land Shall Last, McClelland and Stewart, p. 173.
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64. Rene Fumoleau, As Long As This Land Shall Last, McClelland and Stewart, p. 143.
65. Power of Attorney signed by G. Breynat and Nazaire Wilfred Champagne, Commissioner for OATHS in and for the N.W.Territories, 27th day of November, A.D. 1929.
66. G. Breynat, omi, Vic. Apostolic of Mackenzie, Letter to Mr. A. Cote, Assistant Deputy Minister of the Interior, April 25, 1913.
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68. Cecile Antoine, Dene elder, Fort Simpson, in conversation with Rene Lamothe, 1973.
69. Gabe Sanguet, elder from Jean Marie River, restating the words of Ehtsie Norwegian during negotiations of the treaty in Fort Simpson in 1921. Gabe's statement was made in his home to Betty Menicoche Hardisty and Rene Lamothe during a research interview to identify principles and parameters for a constitution for the Deh Cho region.
70. Paul Ekenale recalling part of the negotiations of Treaty 11 in Wrigley between his father and Commissioner Conroy. Statement made in Paul's house to Betty Menicoche Hardisty and Rene Lamothe during research interview to identify principles and parameters for a constitution for the Deh Cho region.
71. Elder Henry Ekali of Jean Marie River recalling information on the negotiations of treaty 11. Henry is over 100 years of age and still lives quietly by himself in his own house. He gave the above information to Betty Menicoche Hardisty and Rene Lamothe in his house on November 15, 1991.
72. Mrs. Julian Andre, Arctic Red River, Dene Nation Archives, interviewed by Edward Nazon April, 1973.

73. Amis Naditichy, Arctic Red River, Dene Nation Archives interviewed by Edward Nazon, April 1973.
74. Donald Greenland, Gwich'in, interviewed by Gerald Sutton, July 1st, 1971 (Gerald Sutton was legal counsel for the Dene in the Application of Paulette et al.)
75. Andrew Stewart, Aklavik, Dene Nation Archives, interviewed by Francis Blackduck, 1970.
76. Mr. Johnny Kay, Gwich'in elder, Councillor, Fort McPherson Band (1921-1948), Chief Fort McPherson Band (1948-1960), Testimony concerning the signing of Treaty 11, July 1973, Dene Nation Archives.
77. Paulette et al transcripts, Daniel Sonfrere, Chief of Hay River Band, p. 120.
78. Ibid. Louis Norwegian, p. 130.
79. Ibid. Chief Paul Baton, p. 191.
80. Ibid. William Squirrel, Fort Providence, p. 330.
81. Ibid. Michel Landry as Translated by Joe Squirrel, p. 344.
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84. Ibid. Gerald Sutton, legal counsel questioning Johnny Kay of Fort McPherson, p. 451.
85. Ibid. Johnny Kay, p. 451.
86. Ibid. Tadit Francis, Fort McPherson, p. 453.
87. Ibid. Gerald Sutton questioning Isadore Kochon, p. 459.
88. Ibid. Isadore Kochon, Colville Lake, p. 459
89. TREATY No. 11 (June 27, 1921) and ADHESIONS (July 17, 1922) WITH REPORTS, ETC. Queen's Printers and Controller of Stationery Ottawa, 1957, p. 5.
90. Dene witnesses in each of the communities in which the Treaty was negotiated.
91. The Superintendent General of Indian Affairs wrote to the Minister of the Interior on November 23, 1920: "For some time we have been considering and postponing the question



of taking a cession of the Indian title to lands in the MacKenzie River District... owing to the rapid and unexpected exploitation of the country, the establishment of oil industries and the increasing immigration of prospectors, trappers, traders and white settlers. ... I think the proposed treaty should follow the main lines of Treaty No. 8..."

92. Bishop Breynat, Vicar Apostolic of the MacKenzie, Affidavit signed at Ottawa, Ontario, 26 November, 1937.
93. Ibid.
94. Dene witnesses in each community where Treaty was negotiated.
95. Bishop Breynat, Quelques faits au subject de la situation des Indiens dans ... les Territoires du Nord-Ouest. Unpublished material, Oblat Father's Archives, Yellowknife, NWT
96. Elise Gargan, Elderly Dene in Fort Providence, gave the following statement to Shirleen Smith and Chief Berna Landry in the summer, 1993. "At the first Treaty, they said nobody's going to talk to you about the land. They said the Treaty was a symbol thanking the Creator that this land exists with the people. It was sort of for being thankful that we exist with the land."
97. Dene witnesses in each community where Treaty was negotiated.
98. Bishop Breynat, Quelques faits au suiet de la situation des Indiens... dans les Territoires du Nord-Ouest., Unpublished material in the Oblat Father's Archives, Yellowknife, NWT.
99. Ibid.
100. Ibid.
101. Ibid.
102. Ibid.
103. Ibid.
104. Wilson Pellissey, Dene Elder, Wrigley, 1993.
105. Michel Landry (Corbeau), Fort Providence, 1993.

106. Public Government For The People of The North. Dene Nation and Metis Association, publisher, Jan 1, 1982, p. 19.
107. Sally Weaver, The Hidden Agenda, The reader is referred to this book for published material which substantiates the statement.
- J. Rick Ponting, Arduous Journey Canadian Indians and Decolonization, Chapter One, Historical Overview and Background pp. 18 - 56.
108. Dene leaders and elders, Personal communication in leadership workshops and meetings.

The following documents are available as appendices to the Deh Cho Tribal Council report, but were unavailable for printing:

- A. Dene (Slavey) verb TO GO
- B. Spring Celebration
- C. Exhibit 55 -- Paulette Case Listing of Affidavit Names
- D. Photocopy of Treaty 8 document Signed Fort Resolution, 1899
- E. Paradigm to Dene View of Dene/Canadian Relationships
- F. Government of Canada 1969 White Paper on Indian Policy
- G. Dene Nation transcripts re: Participation in Territorial Government
- H. Public Government for the People of the North
- I. Dene Government: Past and Future









**DOGRIB TREATY 11 COUNCIL**

**CDSC RESEARCH  
FINAL REPORT**



## DOGRIB TREATY 11 COUNCIL

### CDSC RESEARCH - FINAL REPORT

#### Overview of Dogrib Constitutional Position

The Dogrib Treaty 11 Council's constitutional position starts from the assumption that *the present system of government in the western NWT must be substantially restructured to accommodate the desire of the Dogribs and other aboriginal peoples for greater self-government*. On this basis, we are prepared to co-operate with the other communities and organizations represented on the CDSC in undertaking a comprehensive initiative of constitutional reform.

Some of the reforms we have in mind will occur through changes to the constitutional and legal arrangements which currently serve as a framework for the Territories' system of public government. Clearly, however, a considerable part of this restructuring must be carried out through self-government negotiations with the government of Canada.

Since both of these processes will be proceeding at the same time, care must be taken to ensure that the results of constitutional reform and Dogrib self-government talks complement and support each other. From the outset, the Dogrib people wish to emphasize our desire for Dogrib self-government arrangements to co-exist effectively and harmoniously with the public government system of a new western territory.

Our participation in the CDSC will have as its main focus the achievement of a *significantly reshaped territorial level of government in this western territory*. In this regard, we will give particular attention to constitutional guarantees for Dogrib representation in the institutions of the territorial government.

The Dogrib Treaty 11 Council does not consider regional and community governments in the Dogrib settlement area as appropriate subjects for discussion in the western constitutional reform process. In our view, these matters must be addressed through self-government negotiations in the context of the Dogrib regional land Claim.

In taking this approach, we accept that aboriginal groups and organizations in the western NWT may have different objectives for constitutional development. It seems evident to us that CDSC members are at differing stages of political and economic development, and that accordingly, they will seek to achieve alternative arrangements through the CDSC process.

We recognize, for example, the desire of the Inuvialuit and the Gwich'in to create a regional public government with a range of authorities over their communities and lands. As well, we acknowledge the interest shown by some CDSC members in the possibilities to be realized through "district" forms of government.

The Dogrib Treaty 11 Council's position is quite compatible with these various constitutional objectives. In fact, we believe that whatever constitutional arrangements are agreed upon for the western NWT must be both comprehensive and flexible enough to accommodate the aspirations of all CDSC members.

One other general point must be stressed regarding our constitutional position. No matter what shape the system of government in a western territory eventually takes, the federal government must continue to honour its fiduciary obligations to the Dogrib people and to the other aboriginal peoples of the territory.

### **Principles**

Future Dogrib involvement in the work of the Constitutional Development Steering Committee will be guided by these principles:

- The Dogrib people possess the inherent aboriginal right of self-government. Any constitutional framework for a new western territory must respect and give recognition to this right.
- The institutional arrangements for the government of a western territory must be restructured on the basis of a new system of power sharing. This will require a significant redistribution of jurisdictional authorities and resources away from the central/territorial level of government to regional and community-based governments. It may also require transfers of authority and resources from the government of Canada to these regional and community governments.
- A new territorial constitution must accommodate the self-government arrangements which the Dogrib people negotiate with Canada for their region and communities.
- There must be constitutional guarantees for Dogrib representation with respect to the territorial level of government for a new western territory.
- The institutional arrangements recognized in a new territorial constitution must be flexible enough to allow for the varying aspirations and circumstances of the aboriginal peoples of the western territory.



### **Dogrib Self-government**

For the sake of clarity, it may be helpful to describe briefly the broad outlines of the approach that the Dogrib Treaty 11 Council intends to take on aboriginal self-government.

As we understand current policy directions in Ottawa, this approach is acceptable to and supported in principle by the new federal government. The Minister of DIAND, on behalf of Canada, has committed the government to recognize the inherent aboriginal right of self-government, as well as to negotiate appropriate self-government arrangements with aboriginal groups across Canada. A similar commitment to recognize the "inherent right" was made in the recent Speech from the Throne.

With these commitments in mind, the Dogribs seek to negotiate self-government arrangements within the overall context of our regional land claim settlement. A crucial assumption which we will be taking into negotiations is that any Dogrib self-government agreement(s) will be constitutionally protected, along with the rest of our Claim Agreement.

Under a Dogrib self-government agreement, we hope to see Dogrib governing bodies legally empowered to operate within their own independent sphere of legislative authority, and with sufficient resources to allow them to do so effectively. At a minimum, we expect that these institutions will exercise greater control over lands and resources in the Dogrib settlement area, and over programs and services designed and delivered in the Dogrib communities.

By virtue of their constitutionally protected status, the authorities of Dogrib governing institutions will not be vulnerable to unilateral amendment or repeal by either the territorial or federal governments. As such, we anticipate that these institutions will operate on an equal footing with the public government institutions created to govern the proposed new territory in the western NWT.

Future relations between Dogrib government bodies and the institutions of a new territorial government will take place within a framework of negotiated inter-governmental agreements, as well as inter-delegations of power and the sharing of resources.

The Dogrib Treaty 11 Council recognizes that future work is necessary on the question of how best to manage relations between Dogrib governments and other jurisdictions. In the coming months, we look forward to sharing views on this complex issue with other members of the CDSC.

### **Representation in a New Territorial Government**

In the Council's view, more is at stake in reforming the territorial government than a redistribution of some of its powers and resources to other levels of government within a western territory. On top of this, we also seek a number of guarantees for Dogrib representation in the institutions of a restructured territorial government.

To adequately protect our interests, these guarantees must be explicitly spelled out in a new territorial constitution. Mere recognition in the electoral laws of the territory will be insufficient protection. More specifically, we feel that the Dogrib people are entitled to a minimum number or percentage of seats for their representatives in any new Legislative Assembly for the territory.

Of particular concern to us is the question of how representation in the Legislative Assembly is to be settled. We have already seen with the present Assembly how difficult it can be to find an appropriate formula for allocating seats.

In view of the complicated array of interests which may be represented in a new Assembly, the Council will reject any attempt to determine representation simply on the basis of population. An acceptable formula for assigning Assembly seats must take into account several different yet related factors: proportion of total population; number of regional or district units in a new western territory; and, the need to provide minimum guarantees for every aboriginal group entitled to representation.

The Dogrib Treaty 11 Council welcomes the opportunity to discuss the issue of representation at greater length with other members of the CDSC. We also look forward to a full discussion of the alternative means by which representatives to the Legislative Assembly might be chosen by their constituents.

### **Recognition of Rights in a new Territorial Constitution**

An overly complicated constitution for a new western territory will be in no one's interest, and could well result in endless wrangling over the interpretation of its wording. For this reason, the Council would prefer to see a relatively simple constitutional text emerge at the end of the CDSC process.

At the same time, we feel it is essential that a new territorial constitutional constitution gives appropriate recognition to certain fundamental collective rights. At a minimum, there must be explicit constitutional affirmation of and protection for:

- the aboriginal and treaty rights of the aboriginal First Nations (including the Dogribs) of the new territory, including those rights specified in land claim and in self-government agreements with Canada.

- the inherent aboriginal right of self-government possessed by each of the aboriginal First Nations(including the Dogribs) of the western territory.
- the languages of the aboriginal First Nations(including the Dogribs) of the western territory. In the case of the Dogribs, this will mean constitutionally protected official language status for the Dogrib language in the Legislative Assembly, the territorial courts and the territorial government bureaucracy.

### **Amendment of the New Territorial Constitution**

A crucial issue for the Dogrib Treaty 11 Council in future CDSC discussions will be the nature of the constitutional amending formula. It is essential for us that the Dogrib people and/or their representatives be guaranteed a role in any process for amending the territorial constitution.

In taking this position, we do not want to see an amending formula put in place which is so complicated that it effectively blocks all future constitutional change. Nevertheless, appropriate mechanisms must be devised to ensure that the constitution cannot be changed without the consent of the Dogrib people. After witnessing so much political and constitutional change undertaken in the NWT without our approval, we will not settle for anything less.

Constitutional amendment raises some very complex issues, and the Council is still examining the implications of various possible amending formulas. For the sake of discussion, we offer these suggestions:

- As a general rule, amendments to the new constitution must be approved by a specified majority(say, three-quarters) of the members of the Legislative Assembly, as well as each of the aboriginal groups represented in the Assembly.
- Amendments affecting aboriginal and treaty rights guaranteed in the constitution must have the approval of all the aboriginal groups represented in the Assembly.
- Amendments affecting the distribution of governmental powers within the new territory must be the subject of a territory-wide referendum, and must have the support of a majority of voters in each of the territory's regions.

Similarly, we wish to make the following proposals on the most appropriate process for drafting and ratifying a new territorial constitution:

- A final constitutional proposal for a new western territory should be drafted by an elected or an appointed Constituent Assembly. There must be substantial guaranteed representation for the Dogrib Treaty 11 Council in this Assembly's deliberations.

- Any final constitutional proposal must be the subject of a western territory-wide referendum, and must be approved by a majority of voters in each region, including the Dogrib region.

We hope that these proposals, as well as others which may be put forward, are carefully considered by CDSC members as our discussions proceed.

### **Future Jurisdictional Transfers**

The issue of devolution cannot be adequately addressed within the limits of this letter. Even so, the Dogrib Treaty 11 Council would like to make some preliminary comments.

The Dogrib people have been participating on the CDSC, on the understanding that this body has the primary responsibility for guiding the process of western constitutional development. However, the GNWT's recently announced devolution initiatives, including the transfer of legislative authority over sub-surface resources, call into question the value and purpose of the CDSC's activities.

From what we know of these proposed initiatives, they have implications for the constitutional development of the NWT at least as significant as the work of the CDSC, and they are being undertaken outside the CDSC process through bilateral talks with Canada. If allowed to proceed at this time, these initiatives could end up substantially pre-empting or even undermining the role of the CDSC in constitutional reform.

For these reasons, the Dogrib Treaty 11 Council believes that there must be a full and frank discussion among CDSC members, concerning the relationship between the CDSC process and the GNWT's ongoing devolution negotiations with Canada.

Ideally, the Council would prefer that there be no further devolution of powers from Ottawa to the GNWT until agreement has been reached on the constitutional framework for a new western territory. But, if jurisdictional transfers are to occur during our constitutional discussions, then we propose the following conditions:

- Before negotiations on a particular transfer can begin, it must first be approved by all of the aboriginal members of the CDSC.
- The Dogribs and other aboriginal groups represented on the CDSC must be directly involved in all stages of the transfer negotiations and subsequent implementation.

**Western Constitutional Reform Process**

The Dogrib Treaty 11 Council support the set of draft principles to guide the western constitutional process, as well as the draft workplan for the CDSC's activities over the next two years. I wish to reaffirm that support.

The Dogrib Treaty 11 Council intends to participate fully in all aspects of the process proposed in the CDSC's workplan, with a view to seeing a new constitution and system of government ratified and then put in place by the time of division in 1999.





**SAHTU TRIBAL COUNCIL**

**WORK PROJECT**

**for the**

**CONSTITUTIONAL DEVELOPMENT STEERING COMMITTEE  
WORKING GROUP**



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## **Preamble**

The constitutional debate has been going on, in one form or another, for many years. The Commission for Constitutional Development, established in mid-1991, completed and released its report covering what was seen as being Phase I of a constitutional development process for the Western Arctic; the Inuit have negotiated a modern land rights agreement; the Gwich'in finalized a land claim agreement which includes an undertaking by the Federal Government and the GNWT to negotiate self-government agreements; and, at the national level, discussions on constitutional renewal has resulted in widespread recognition and acceptance of the inherent right of aboriginal peoples to self-government. A plebiscite on the boundary for division of the NWT has taken place moving us a step closer to the creation of a new Western Territory and an aboriginal minority in the Western Arctic. In addition, and as discussed above of relevance to the constitutional debate, the GNWT Financial Management Board initiated and completed a review of the operations and structure of northern government (Strength at Two Levels) which resulted in the GNWT going ahead with "Program Transfers". Most recently, the Dene and Metis of the Sahtu ratified their land claim agreement

The Sahtu Dene and Metis will only realize a portion of their Aboriginal Rights with the signing of their Land Claim. A major aspiration which has not been fully addressed in the Land Claim is the capability of the Sahtu Dene and Metis to govern their own affairs as a distinct cultural identity within the framework of the federated state of Canada. The Land Claim Agreement incorporates a Framework Agreement which commits the Federal Government to the negotiation of self-government agreements with the Sahtu Dene and Metis and sets out some objectives and principles for self-government agreements. Further, the Sahtu Dene and Metis are guaranteed participation in any process concerning reform of the constitution of the Northwest Territories.

The objectives of self-government agreements to be negotiated following signing of the Sahtu Claim shall be to "describe the nature, character and extent of self-government, and the relationship between government and Sahtu institutions and to accommodate self-government within the framework of public government". Self-government negotiations will also address the



**"desire of Sahtu Dene and Metis to have self-government as close to the community level as reasonably possible".**

As the Sahtu Dene and Metis initiate and undertake self-government negotiations with the Federal government in accordance with the principles and objectives outlined in the Claims Agreement they are also participants in the Western Arctic constitutional development process which is seeking to define a "public" government for the Western NWT. Both processes are mutually exclusive yet dependent on each other. A new constitution for the Western NWT must recognize and provide for the aboriginal self-government rights of the Dene and Metis which will be negotiated as part of the land claims agreement. Likewise, Dene and Metis self-government mechanisms negotiated with Ottawa must accommodate the requirement for public government in the NWT.

The situation is made more complex by the GNWT initiative to transfer program and service responsibilities to the community level. This is seen by some as a practical move toward increasing community control over programs and services and therefore a step toward increased self-government at the community level. Such transfers are, therefore, relevant to the constitutional debate underway. Program Transfers are being initiated without knowing what jurisdiction and authorities may be eventually vested at the community level as a result of self-government regimes established under the land claims agreement and/or which may flow from the development of a new Western NWT constitution.

It is important that program and service transfers be based on a perceived need to match community responsibilities to established authorities at the community level. These authorities, whether aboriginal or public, will not be known until a new constitution is in place. For this reason, it is likely that the GNWT's current initiative to transfer program and service responsibilities to community "governments" may prove to be premature and likely to result in a fragmented regime for program and service delivery which may have little relevance under a new Western NWT constitution.

Adding to an already very complex picture is the fact that many regions within the Western Arctic see aboriginal self-government and its relationship to public government very differently. Further, within regions, it appears that individual aboriginal communities have varying perspectives regarding the

jurisdiction and authorities of community aboriginal government and public government.

In short, **the Constitutional Development Steering Committee Working Group faces a daunting task.** It will be challenged to develop innovative approaches to a new constitution for the Western Arctic which meet the requirements for public government yet reflect the varying aspirations and interpretations of community/regional aboriginal self-government and concurrent processes addressing same.

### **Relationship to self-government negotiations**

The Sahtu Tribal Council is participating in, and will continue to participate in, all forums or initiatives relating to, or which may impact on, the self-government aspirations of Sahtu aboriginal residents. However, the Sahtu aboriginal communities have entered into an agreement with the Government of Canada which provides a framework for, and a commitment to, self-government negotiations with Ottawa. This forum is seen as the "senior" process for achievement of aboriginal self-government aspirations and will continue to be the major focus of Tribal Council effort and resources.

**Participation in, and debate over, a new constitution for the Western Arctic is viewed by the Sahtu aboriginal community as being secondary and of lesser importance to initiatives associated with self-government negotiations** with the Federal Government, although there is recognition and respect for the obvious relationships. For this reason, many of the positions or suggestions that the Tribal Council may make regarding a Western Arctic Constitution are drawn from, or mirror, the principles that the region has adopted, or proposes to adopt, in its negotiations with Ottawa. Fundamental to any discussion of self-government and future Western Arctic Constitution is the recognition of the inherent right to self government and the basis of these rights.

### **Inherent right to self-government**

The inherent right to self-government of aboriginal people has been much discussed, has been recognized by the Federal Government and received support across the country. We do not believe that any purpose would be

served by researching and reviewing the considerable body of largely academic work that has been undertaken in this area. However, the purposes of the Working Group will be served if there is a clear understanding of how the Sahtu perceives these rights as "flowing".

Simply put, **any attempt to define our self-government rights must be based on those rights which were traditionally exercised and our history as sovereign people.** Traditionally, the community/social structure of the Sahtu may be viewed as consisting of three levels. Tribes (communities such as Deline) were composed of various Bands (Colville Lake people, Mountain people) and Bands represented groupings of various Clans (grouping of families, ie. the Aubrey Lake clan of the Colville Lake Band). The regional grouping or organization is a relatively recent development. In this mosaic, Tribes, Bands and Clans exercised control over all aspects of their life (social, political, education, justice etc.) in an autonomous fashion. The prime decision making body was the family group and all authority and decision making flowed from same.

If our inherent right to self-government is to be reflected in a Constitution for the Western Arctic, our traditional basis of self-government must be the determining factor influencing the identification and adoption of jurisdictional responsibilities and structures. As far as the Sahtu is concerned, any practical expression of aboriginal self-government, including a **Western Arctic Constitution, must recognize the community as the senior level of government.**

It should be recognized that the interrelationships between tribes, bands and clans varies within regions and from region to region. Traditionally, these interrelationships are based on traditional custom or practice and are influenced by changing circumstances. Within our region, and likely most other regions, jurisdictional, political, social, cultural and other relationships between communities are considered to be internal matters and will be addressed by tribes, bands and clans. In short, **it is the Sahtu's position that the Working Group charged with developing a framework for a Western Arctic Constitution recognize the community as the senior level of government and but not attempt to embody in the constitution jurisdictional and other relationships at the regional level.** To do so would abrogate many of the principles on which our inherent right to self-government is based.

## Observations on progress to date

Many of the developments of the past year suggest a momentum toward, and support for, positions advocated by the Sahtu communities which include the recognition of community based authorities as the "senior" level of government and the recognition of the inherent right of Sahtu aboriginal people to self-determination and control over our own lives. The recommendations framed by the NWT Constitutional Commission are, in many ways, similar to positions advocated by the Western Constitutional Forum and put forward by Sahtu communities over the years. The proposed foundations of a new Western Territory; the rights of it's peoples, including the inherent right of aboriginal peoples to self-government; and the proposed establishment of what the Commission refers to as District Orders of Government (viewed as "senior" levels of government) are recommendations which paint a picture close to that advocated by the Sahtu.

While the Commission's proposed distribution of powers closely match that which is envisaged by the Sahtu, certain jurisdictions identified by the Commission as being the purview of "central" government should, from the Sahtu's perspective, be shared. These include:

- standards for and regulation of land use
- environmental protection standards and regulation
- standards for wildlife and marine mammal management
- standards for industrial and non-renewable resource development

While it is recognized that the Commission is proposing that the "district" level of government have powers relating to the management of many activities "on the land", the **Sahtu Dene and Metis must have major input and influence over the development of standards governing activities on their aboriginal lands.** This is an authority that has been traditionally exercised and must be maintained.

An area of concern, and one that certainly requires some discussion and clarification, is the respective authority of each level of government as it relates to specific activities. It is recognized that some areas such as tourism



development, while most appropriately the jurisdiction of the District Level of government, can be pan-territorial in scope (ie. promotion of the GNWT as an attractive tourism destination) and the interests of efficiency and effectiveness would best be served by a "centralized" approach.

**Any Western Arctic Constitution will require structures and jurisdictional arrangements with the flexibility to co-ordinate certain program initiatives under the jurisdiction of the District Governments at the "central" level and also to provide for varying levels of District Government "capacity" when it comes to delivery of program and service responsibilities.** District Governments, either collectively or independently, must be able to delegate authority and responsibility to the "central" government.

**The Western Arctic Constitution** must not only recognize and provide for public and aboriginal government and establish District Government as the "senior" level of government, it **must also accommodate a fundamental need for a change in attitudes at the community level - a need for people to build their self-esteem and self-worth and to start focusing on their own ability to meet basic day to day economic and social needs.** The effectiveness and acceptability of any government will largely be determined by the ability of the people (who, in fact, are the government) to control and direct the affairs and activities of the government. For this reason, **community development is seen as being a fundamental part any new government and must be incorporated, in some manner, in any new constitution.**

### **Implementation of the constitution**

There will be a need to identify an implementation strategy for the new constitution given the significant changes which are contemplated and the impact it will have on the way public services are administered and delivered. While the Sahtu has not addressed the subject of implementation, we are confident that **the manner in which the new constitution is implemented will be as important as the constitution itself.**

Over the past 100-150 years, our people have suffered from cultural exclusion, epidemics, residential schooling, drug and alcohol abuse and the



programs and policies of governments which lacked an understanding and sensitivity to culture and traditions as an independent people. The damage to our self-esteem and our dependency has diminished our ability to govern ourselves and participate effectively, and in an equitable manner, in any new government that may emerge in the Western Arctic. Any implementation strategy developed for a new constitution must give consideration to what has happened in the past and address the need for healing, awareness and capacity building.

Of a more operational nature, the need for administrative efficiency will, in all likelihood, guide the decisions of District Governments regarding what programs and services they will assume financial and administrative responsibility for and what program and service responsibilities they will delegate to the "central" level of government. As a general statement, it is unlikely that District Governments will exercise their authority and assume financial and administrative responsibilities for program and service delivery unless it is financially advantageous to do so or it is seen that the quality of programs and services will improve as result.

Over the period when the new constitution is being implemented, the existing bureaucracy will, in all probability, continue to deliver a variety of programs and services although the number of programs and services being delivered will diminish as District Governments exercise their authority in their areas of jurisdiction and increasingly assume delivery responsibilities. Not only will the existing bureaucracy be delivering programs under the authority of District Governments they will be challenged to deliver programs and services in a manner which is more responsive to the needs of District Government and to deliver programs and services in the most efficient and effective manner possible. During implementation of a new constitution the extent and speed at which the existing "central" bureaucracy reduces its staff and operations will be determined by how well it serves the needs of the District Governments.

### **Constitutional framework**

In considering a framework for a new constitution for the Western NWT, the Sahtu has been influenced not only the work undertaken by such bodies as the Western Constitutional Forum and, more recently, the Constitutional

Commission but also by positions taken by certain Sahtu communities and discussions which have taken place at the community level. Further, the Sahtu has considered the nature of government and its basic functions.

Fundamental to the Sahtu position is the belief that government is the people and that the mechanisms/institutions of government (bureaucracy) exist only to serve the people. The Sahtu is cognizant of the danger of creating a bureaucracy which is perceived as the "government" and the propensity of "government" to take on a life of its own. This danger exists at the community/regional level as well as at the territorial level (we are all familiar with the enormous growth of the GNWT over the past 10-15 years). The **Western Arctic Constitution** should reflect this concern and **should attempt to limit the size and possible future growth of government political and bureaucratic structures at the territorial level**. Toward this end, provision must be made for rigid accountability to senior government (communities) and the scope of central government activities should be narrowly defined and limited to only those activities which are essential to meeting the common needs of the people in such areas as the protection of individual rights; the protection of collective rights; providing economies of scale in delivering programs and services; the collection of taxes; defense, security; some law making and perhaps some environmental protection.

The following notes present a an overview of a framework for a constitution which may accommodate the aboriginal self-government aspirations of the Sahtu. Suggestions are presented in point form to facilitate discussion.

***Principles:***

- authority and control at the community level. All residents of a community should participate in all planning and decision making and there should be equal participation by men and women with decisions based on consensus.
- community participation in all government functions
- aboriginal jurisdiction defined
- regional structures not addressed in the Constitution - communities to define their own regional structures and organization(s)
- recognition rather than delegation of authority to communities

- central government gets its authority and jurisdiction from the communities
- the promotion and encouragement of community and individual development in support of the above principles (promoting, encouraging and increasing the capacity of community individuals to participate in government)

***Structures and Institutions:***

Two, and possibly three, levels of government are envisaged:

**DISTRICT GOVERNMENT** (Aboriginal and Public)  
Prime decision making body

**REGIONAL ORGANIZATIONS** (Alliances)  
To be defined by communities

**CENTRAL GOVERNMENT**  
Second level of decision making process

- The structure and mandate of District Government to be determined by the people of each district within the framework of the Constitution.
- District Government to represent both aboriginal and non-aboriginal people. District Governments to have established geographical area of jurisdiction.
- Mechanisms for accountability to be determined by each district.
- Regional organizations may be established by District Governments and receive their mandate and authority at the pleasure of District Governments.
- Structure/organization of regional organizations to be determined solely by District Governments.

Mandate of Central Government limited to:

- the establishment of territorial budgets
- the setting of territorial policies & priorities

- making territorial laws
- external affairs
- the collection of taxes

Decisions made by the Central Government on issues within its mandate must first be discussed and positions taken by the District Governments.

The Central Government to consist of six (6) MLAs and a small bureaucracy. MLAs to be elected by communities/regions according to process and procedure acceptable to each region/community. An Assembly would consist of the six MLAs and District Government "representatives".

Elections would take place at a "convenient" time to give effect to traditional, seasonal activities and to ensure full involvement of as many people as possible in the process. Elections to be held every four years. Agendas for Assemblies to be established by both District and Central governments in a manner similar to those held by the Dene Nation.

#### ***Jurisdictions:***

Both the District and Central levels of government would have clearly defined areas of jurisdiction. Jurisdiction at the District level would include both public and aboriginal jurisdictions. Similarly, government operations at the central level would involve aboriginal and public areas of jurisdiction. Certain areas would be solely the jurisdiction of the aboriginal constituents of a District while others would be the jurisdiction of both aboriginal and non-aboriginal people. Aboriginal and Public jurisdictions may be broken down as follows:

#### **Areas of Aboriginal Jurisdiction:**

- Treaty
- Land claims
- Self-govt. negotiations (land claims)
- Self-govt. negotiations (constitutional development at the national level)

Plus

- Traditional lands
- Wild life/harvesting

**Areas of Public Jurisdiction:**

- Education
- Training and up-grading
- Economic development
- Housing
- Municipal infrastructure
- Health care
- Police, corrections
- Wills, estates
- Social services
- Taxation
- etc., etc....

**Financial Administration & Authority:**

**District Government:**

- provides financial reports to central government (to meet Ottawa's requirements)
- authority for all expenditures
- freedom to move \$ between activities

**Central Government:**

- central clearing house for financial matters
- negotiates \$ from Ottawa
- some money management matters for communities



- manages \$ for activities/jurisdictions delegated to central level from communities
- income tax

#### **Accountability:**

- Requirement for District Assemblies in advance of Central Assembly. Need for District position on issue to be developed prior to decision being made on issue at central level.
- District government reps. will be required by constitution to promote community and individual development (increased awareness etc.)
- Incorporate principle that people be involved at decisions being made at all levels.

#### **Dispute Resolution:**

- Central Govt. to work by consensus
- Majority if no consensus
- District to have veto over matters affecting its own district

#### **Protection/Amendment:**

- Changes to constitution to require approval by all Districts
- Procedures to be established

## **Social Charter**

A Social Charter needs to be defined and established in the constitution. This Charter would include recognition of individual and collective rights as well as aboriginal rights including political, social, cultural and economic rights. Aboriginal rights would not prejudice the rights of others. The Social Charter would also address the rights of the handicapped and the rights of women.

**The Social Charter would be specific in defining individual rights.** For example, the rights of children to live without being impacted by family violence, to learn their culture and history and to learn the language of their land would be defined. Similarly, the rights of women to live without violence, participate fully in social, cultural and political activities and to live without discrimination of any kind should be specifically defined.

## **Follow-up**

Obviously, there are a number of areas relating to the proposed model that require further study and thought. For example, one such issue is the issue of representation by population. The Sahtu Tribal Council recognizes the limitations of the work that it has undertaken to date but believes that the principles put forward, together with the notes on a possible framework for a Constitution for the Western Arctic, will provide the Constitutional Development Steering Committee and Working Group with an insight not only into where the Sahtu stands with respect to constitutional development but also possible approaches to the development of a framework for our new constitution.



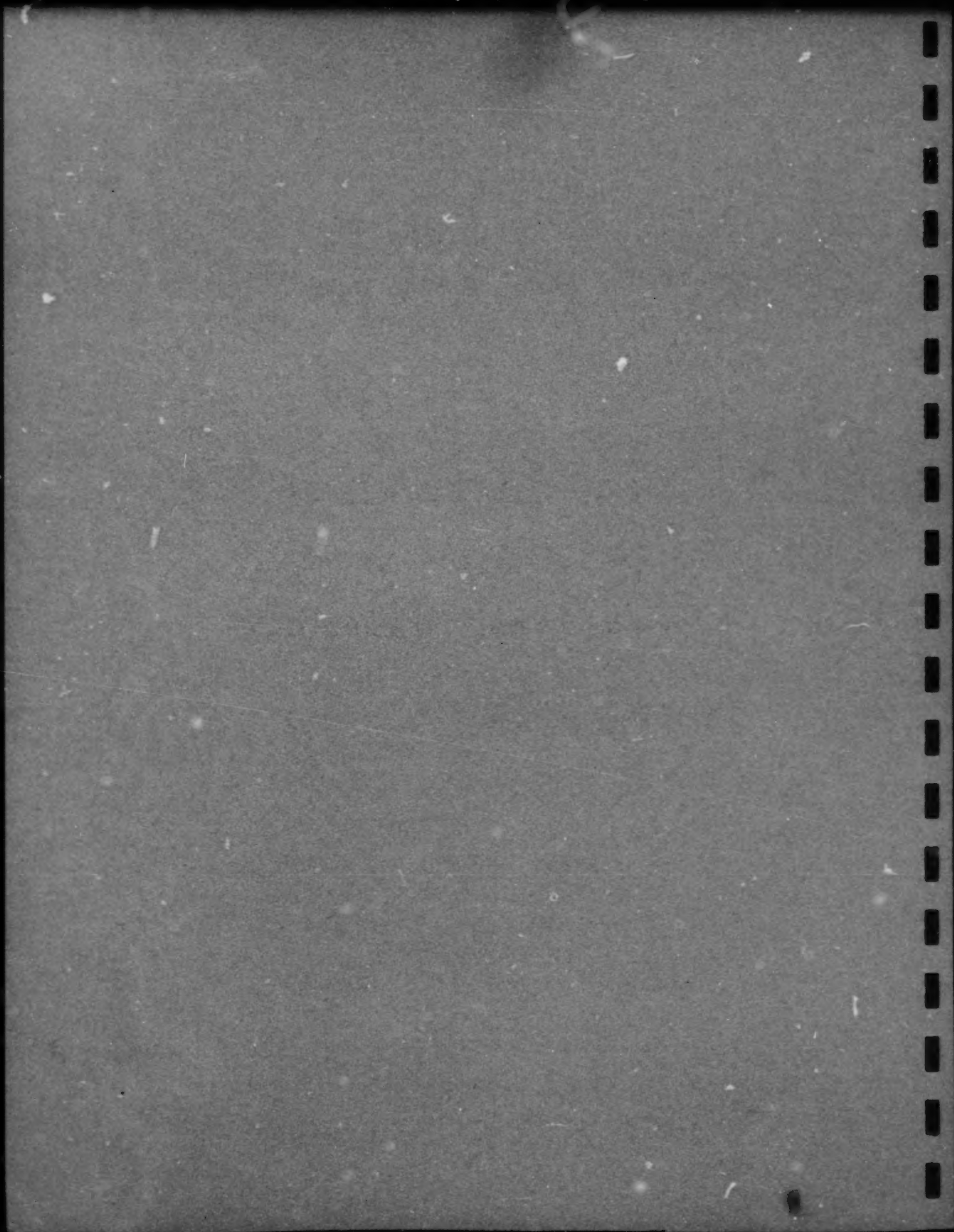
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***PREPARED BY THE***  
***MÉTIS NATION - NORTHWEST TERRITORIES***

***JUNE 1994***





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I. EXECUTIVE SUMMARY

It is the intent of this paper to discuss the position of the Metis Nation with respect to the proposal that a constitution be drawn up for the impending new territory of the Western Arctic.

A list of the guiding principles for self government for Metis, shaping our ideas about this constitution is included, along with a brief discussion of each. Following this is a short summary and critique of the present constitution and form of government in the Northwest Territories.

A more detailed discussion of the Bourque Commission's report, in particular it's recommendations for Metis people and for a new form of government for the Western Arctic is also presented here.

Finally, a list of recommendations for constitutional change with respect to the Metis people follows the discussion of Bourque (Working Toward a Common Future.)

## II. INTRODUCTION

Constituting 11-12% of the total population of the Western Arctic, the Metis Nation - Northwest Territories has long occupied a position in the centre between native society on the one hand and non-native society on the other. This position in the middle has led the Metis Nation to the belief that any meaningful change in a society can only be negotiated through the adoption of a reasonable political stance based on flexibility and compromise. At the same time however, we must ensure that the aboriginal rights of the Metis under section 35 of the Canadian Constitution are entrenched and will not be allowed to be overridden by the larger constituent groups of society as a whole. The Metis people will insist on and assert our aboriginal rights but will also strive to protect the rights of all groups as a balance of power must exist in order that none feel disenfranchised or otherwise disenchanting, both positions which have been familiar to Metis in the past.

Major change is looming on the horizon with the division of the Northwest Territories into two parts, Nunavut and the Western Arctic, scheduled for 1999. This change will most certainly affect the current balance of power among the various groups in the Western Arctic, thus necessitating a constitution for the Western Arctic that recognizes and entrenches the rights of each group. Division, and the recent signing of a Metis Accord between the Congress of Aboriginal People and the Government of Canada that they will negotiate self-government and other considerations have made it possible for Metis people to better prepare for participation in constitution building. More recently, the Minister for the Department of Indian and Northern Affairs accepted responsibility for Metis North of the 60th parallel. He also agreed to negotiate land and resource agreements with the Metis people in the southern part of the Northwest Territories who are not currently negotiating land claims agreements. This affords the Metis Nation a hitherto unprecedented opportunity to ensure our aboriginal rights are entrenched and



protected and our place in society is recognized. This opportunity for the Metis to strongly assert self-government options will allow us to make a strong contribution to the constitutional process which will ultimately define the new jurisdiction of the Western Arctic.

### **III. GUIDING PRINCIPLES**

Accordingly, the Metis Nation has developed a list of guiding principles by which to shape our constitutional contribution. We wish to protect our aboriginal right to self-government and ensure we will benefit from a new constitution following division. Although several in number they are fairly simple in content in order to clearly delineate our position, as follows:

#### **1) Recognition and entrenchment of Metis rights in NWT Constitution**

The Metis Nation - Northwest Territories insist on the inclusion and entrenchment of Section 35. of the Canadian Constitution in a new constitution for a new western territory. Section 35. recognizes existing aboriginal and treaty rights and also defines "aboriginal people of Canada." It is also necessary that Metis people are afforded equality under section 91.(24) of the Canadian Constitution, which gives Parliament exclusive legislative authority for ...Indians, and lands reserved for Indians.

## **2) Recognition of the need for a strong Central Government.**

In order to ensure representation of our interests in southern Canada, a strong central Western Arctic government is necessary to counteract the perception that we may be seen as merely a collection of segmented district governments representing a very small population. This perception could lead to difficulties when dealing with provincial and federal government ministries and agencies.

## **3) Recognition of District Governments as a reality in the Northwest Territories.**

Across the territories, there exist districts and regions with diverse interests, concerns and ethnic populations. Regional land claims such as the Inuvialuit Final Agreement and the Sahtu Agreement creates de facto district governments in their respective areas. The Metis Nation feels that the need to bring government back to the communities and the people in them is one of the most significant and desired issues debated in the Western Arctic.

## **4) Recognition that individual as well as collective rights must be protected.**

We support the reaffirmation of rights as set out in the Charter of Rights and Freedoms and believe both the rights of the individual and the rights of the collective must and can be protected. We support and recognize that other aboriginal people have collective rights specific to themselves such as treaties and negotiated land claims. Even more specific to this, the Metis Nation will now be offered the opportunity to develop collective self-government rights outside of land claims and treaties. This should not take away from the view stated by the Bourque Commission in its report: "The overriding objective of a new constitution is to build a system of government which will protect the individual

rights of all its citizens and the collective rights of its aboriginal peoples and whose overarching principle is one of bringing people together."

**5) Recognition of additional rights and privileges obtained by Metis people.**

Since the recognition and entrenchment of Metis as aboriginals under the Canadian Constitution 1982, Metis people have sought and, more recently, obtained assurances of negotiations to ensure the same rights as other aboriginal peoples. Recent court cases recognize the rights of Metis to hunt, gather, trap and fish. The Metis will continue to negotiate extended medical benefits for Metis. As aboriginal people we will obtain no less than full equality of access to funding in order to deliver Metis housing programs for Metis people. We are seeking full recognition of the Metis culture and access to funding to ensure our place in the history of Canada is told in schools and history books. The Metis must receive appropriate funding for heritage research and the development of educational materials. The Metis will take control of the delivery of economic development opportunities for Metis.

**6) Recognition of the right for Metis veto power.**

Metis are concerned that any rights granted under a constitution could be amended or completely eliminated through changes passed by larger groups in society and government holding more power. Accordingly, the Metis see the need for the right to veto any legislation or change to the constitution that would directly affect us. A paper presented by the Dene and Metis in 1982, entitled "Public Government for the People of the North," offered the idea of a Denendeh Senate. In summary, it proposed the power to veto any legislation which adversely affected aboriginal rights. The Senate would outline its objections and return the legislation to the appropriate body for reconsideration

and resubmission to the aboriginal senate. It also outlined powers to run those institutions established by the aboriginal people to manage exclusive aboriginal lands and resources.

**7) The need to settle land claims and other agreements.**

The Metis Nation feels it is a priority to have land claims and other specific agreements such as the Northern Accord settled in the Northwest Territories prior to the establishment of a new western territory. This will ensure that issues such as aboriginal rights and areas of exclusive control over specific areas of land and resources and other self-government issues will be clearly established. The Metis also seek to affirm that their rights be recognized, upheld and protected as recommended by the Bourque Commission.

**8) Recognition of Metis rights to access to education.**

The Metis people feel that education is fundamental both to individual development and to the cultural development of the Metis Nation as a whole. Accordingly, Metis people desire full access to funding in order to begin to manage and control the delivery of education programs and full control of the preservation of our cultural heritage. The Metis Nation Assembly held in Fort Providence in August of 1992 passed a unanimous resolution outlining its priorities in education which have not changed since that time.

**9) Recognition of aboriginal justice systems.**

Many social problems plague the Metis such as drug and alcohol abuse and domestic violence. As part of our self-government systems we will pursue inclusion of aboriginal

systems of justice in the process to deal with and treat these problems. We believe in the rights of communities to assume the responsibility to police themselves as they take over more and more programs under the leadership of a district government. We fully support the development of specific laws to do away with all violence against the person.

#### IV. PRESIDENT CONSTITUTION OF NORTHWEST TERRITORIES GOVERNMENT

There is no single document that can be said to be the constitution of the Northwest Territories. Rather, there are a number of different acts that affect the government of the Northwest Territories. These include the Constitution Acts 1867-1981, the Manitoba Act 1871, the Dominion Land Act, the Northwest Territories Act, the Territorial Lands Act, the Department of Indian Affairs and Northern Development Act, and the Indian Act. While the other Acts of Parliament have a definite effect on the government, in particular the Constitution Acts which should guide the relationships between different units of government, the one that has the greatest day to day effect is the Northwest Territories Act. (NWT Act)

The NWT Act is an act of Parliament and therefore can be changed or repealed at Parliament's discretion. It ensures that the NWT remains very much a colony of the Government of Canada, which retains the power to rescind any legislation passed by the NWT Legislative Assembly for up to one full year. According to the Drury Report of 1980, the Act under Section 13 provides for the paramountcy of all federal legislation which effectively permits the federal government to influence the basic law and institutions of the NWT at all stages of their interpretation. Although the Legislative Assembly has in recent times assumed a much greater role in the day to day activities of government, it remains a fact that the real decision making power lies with Ottawa.



It goes almost without saying that this arrangement can allow for very little meaningful input by the people it is meant to govern. The act was initially passed in 1905 when the federal government took a much more direct role in the administration of the NWT. It also reflects the dominant philosophy of that time which held that aboriginals were not capable of governing themselves. That this philosophy is changing is apparent in the number of land claims that have been settled in the North in last few years and the more recent signing of a Northern Accord which gives aboriginal people control over their traditional lands. With division of the Northwest Territories scheduled for 1999 as a result of the Nunavut Land Claims Settlement, it is a perfect opportunity to redefine both government and its processes to reflect this changing philosophy.

Since the federal government has been responsible to date for the drafting and passing of all legislation concerning the NWT, it will certainly be necessary to involve the federal government in the process of changing this body of legislation. Further, the federal government has been responsible for both Treaties 8 and 11, and more recently accepted responsibility for Metis north of 60. They continue to be responsible for all of the land claims negotiations and corresponding settlements in the North. All of these have some bearing on the government of the NWT now and will certainly continue to have some effect on any change in government or its constitution in the future. Therefore, the Metis Nation feels it is highly desirable that the federal government take an active role in any discussions concerning a constitution for the Western Arctic.

## **V. BOURQUE COMMISSION FOR CONSTITUTIONAL DEVELOPMENT**

The Commission for Constitutional Development was established in June 1991 to look into and make recommendations for a new constitution for Western Arctic. Chaired by Mr. James Bourque, the Commission published its report entitled "Working Towards a Common Future" in April 1992. The commission paid much attention to the ethnically diverse make-up of the Northwest Territories, believing as it did that all peoples must be included in any new constitution. Further, a large part of the report is taken up with defining rights of the peoples of the NWT, including the rights of all Aboriginal First Nations as well as the individual rights of all citizens of the Western Arctic. Finally, the commission used the largest part of the report to delineate and define a new model for government and its powers for the Western Arctic. The commission also included a copy of a draft constitution for a new Western Territory as a basic document from which to promote discussion necessary to build the consensus for a new constitution.

While there is much for Metis people to applaud in the Bourque Commission's report, there are two items of particular interest to the Metis Nation that warrant further discussion. As noted, the Commission recognized the various ethnic groups that make up the Western Arctic and recommended that the rights of each of these groups be affirmed and entrenched. The Metis First Nations rights among others were clearly outlined both in the body of the report and in the draft constitution. Specifically, these rights (as taken directly from the Bourque Report) included:

1. Citizens of the Metis First Nations will have the same rights to hunt, fish, trap and gather as those of the Treaty First Nations.

2. Metis First Nations will have the right to a land base within the New Western Territory and the size of these land bases will be equivalent to the amount of land that was offered under the failed Dene/Metis agreement. This means that each Metis First Nation will receive five square miles for each of their citizens.
3. Each Metis First Nation will have the right to exercise its inherent right to self government on its land base and to provide services to its citizens not living on the land base.
4. Each Metis First Nation will have the right to set the rules under which citizenship will be granted.
5. Citizens of the Metis First Nations will be entitled to receive the same program benefits that Indian and Inuit receive from the government of Canada and these program benefits will be administered by the governments of the Metis First Nations.

#### **V. BOURQUE COMMISSION(cont.)**

These recommendations are consistent with the position taken by the Metis Nation in the past which is reflected in the Guiding Principles listed earlier in this report. In fact, they take the Guiding Principles a large step further by strongly recommending that the inherent right to Metis First Nations self government be recognized and entrenched in the constitution. Further, the Bourque Commission recognizes the right of Metis First Nations people to a land base from which it can exercise its right to self government.

Since the release of the "Bourque Report," the Congress of Aboriginal People, formerly known as the Native Council of Canada signed an Accord with the Government of Canada. The accord covered self-government rights and other considerations for Metis and off-reserve Indians. The Metis people in the north have more recently come to an agreement with the Government of Canada that they will negotiate self government agreements along with a land and resource base for those metis in the southern part of the Northwest Territories who are not negotiating a land claim.

The second item of interest to the Metis Nation is the model of government proposed by the Bourque Commission. It could also be referred to as the Union of Regions Model as it takes as its main proposal the development of a regional or district level of government from which power flows up to a strong central government. This model has the value of being closer to any than any other to the system which is desired and which is in fact developing in the NWT today.

The underlying principle which makes this model of government so attractive is that it recognizes that the cultural, economic and geographic diversity of the North make regional or district governments not only practical, but desirable. One government model for all of the cultural groups ignores each groups' traditional ways of governing and therefore is not as effective or respected by those governed. Each district is able to define its own government, therefore ensuring these traditional ways of governing are recognized.

Each district will develop a Charter document which will provide the framework for government in the region such as: law making bodies, their powers, duties and procedures; the delegation to the Central Government where this is seen as necessary; forms of cultural protection appropriate for the region. Of course, these are only a few items which could be placed in a charter document. The question which must remain uppermost in the minds of all are the costs associated with preparing these charter

documents. Are they necessary to administer what is already seen as de facto districts? In this model the term "district" can apply to either aboriginal or district bodies. For example, the people of the Sahtu or the people of Yellowknife can be recognized as a "district" unto themselves.

Special considerations for this model would include:

- Parliament recognizes the authority of aboriginal and regional law making bodies instead of delegating authority to them. It is a very important starting point to show that we have this power inherently and do not accept that the federal government should presume to grant it to us, as in the past.
- As a consequence, any central government gets its authority delegated to it from the district government. This is a delegation of authority upwards which is in fact one of the fundamental principles of government - that power flows from the people. The people both select the system of government they want and they select those people who will form the government.
- The protection of culture and language is assured as the real power lies at the district level.
- Accountability to the individual is optimized as the decisions of government are made at the district level.
- District governments have all the powers needed to meet their responsibilities (this is known as "province plus") with the exception of some financing and taxation powers. District governments do have the authority to levy property taxes in much the same way as municipal governments do



now. They can deliver all programs except those they choose to delegate upwards to the Central Government or downwards to the local government. They can also delegate powers upward to the Central Government.

- The Central Government is restricted to the powers delegated to it by the district government. It is the clearing house for all Federal Public Government funding. It has all taxing power except that of property taxes. It allocates funds to the districts.
- The process is flexible in that the Districts that are able to manage their own affairs can do so. Those that can not delegate their affairs to the Central Government. To make this system work and not be the subject of constant changes requires control and delay mechanisms. It still remains the case though that as a district is able to manage more of its own affairs it can revoke the delegated powers and re-establish control.
- This model recognizes the concept of self-government and sets up the framework.
- All existing laws, structures and services will apply until a district is able to set up its own.

## V. BOURQUE COMMISSION (cont.)

While in nearly complete agreement with most of the Bourque Commission's report, the Metis Nation have for too long been left out of any meaningful discussions about change in our lives to not want to insist on some insurance with respect to some form of self-government rights. This insurance would take the form of Metis regional representation to the Central Government and also in the form of the amending formula for the constitution itself.

The Metis would like to see one Metis representative from each region sit in the Central Government Legislature. The only exception to this would be in a region where no Metis live, such as a proposed region for the Inuvialuit. We see this as being necessary to protect our interests in each region where we live. (See appendix) For too long, our interests have been over-ridden or ignored, and we see this constitutional process as an opportunity to make a positive change in this situation.

The Metis would also like to see a constitutionally guaranteed aboriginal veto over any changes directly affecting aboriginal rights or issues. The Metis people are well aware that what has been granted can be taken away, and in spite of any constitutional guarantees to the contrary, the Metis are concerned that larger groups in society could move to amend the constitution to the ultimate detriment of the Metis Nation. Under section 35 of the Canadian Constitution, we are recognized as having aboriginal rights and Section 25 (a.) and (b.) affirm that these rights cannot be over-ridden. Accordingly, we feel a veto over issues directly affecting Metis to be the way to ensure that this scenario does not develop.

The possibility of this model being implemented depends to a great degree on consensus among all groups. Every group must be committed to the concept. A process of consensus building will be necessary to pave the way for general acceptance of this model.

## **VI. RECOMMENDATIONS**

As a result of the foregoing, the Metis Nation would like to conclude with a number of recommendations for inclusion in the constitutional discussions. For the sake of clarity, and since most of them have been discussed at length above, this list of recommendations will be brief, but will not be in order of importance.

### **IT IS RECOMMENDED BY THE METIS NATION:**

- 1) That section 35. of the Canadian Constitution be included in a constitution for a new western territory.
- 2) The necessity for a strong central government be accepted.
- 3) That the central government be comprised of nineteen members with guaranteed Metis representation in each district (region.) (See Appendix 1).
- 4) That the concept of regional governments as proposed by the Bourque Commission be accepted. This model recognizes the cultural, economic and geographic diversity of the North as well as the need for aboriginal self-government.

- 5) That any amending formula for the constitution of the Western Arctic include a veto for Metis over any legislation concerning Metis.
- 6) Self-government rights negotiated by Metis through land claims and other specific agreements be assured by explicit protection in the constitution.
- 7) That the Federal Government be invited to participate in the Western Arctic Constitutional Process as early as possible to ensure that a new constitution is developed before 1999.
- 8) That all agreements such as the Northern Accord which will spell out self-government rights along with land and resource rights and land claims be settled before the establishment of a new territory.
- 9) That aboriginal justice systems continue to be developed and utilized by any and all jurisdiction in the current and new western territory.

## VII. CONCLUSION

For too long, the Metis people have been on the periphery of both native and non-native society, despite occupying a position squarely in the middle. Because of our relatively small population base, any attempts at inclusion have been ignored or over-ridden. It is time for a change.

The Bourque Commission report and subsequent agreements which the Metis have managed to negotiate offers hope for the Metis Nation that at last change is possible. Up until very recently, the concept of aboriginal self-government was not considered serious enough to be included in any discussion of constitutional change. The Bourque Commission offers as its point of departure a model of government that ensures self-government, control of aboriginal lands, and control of education and culture all in aboriginal hands. The Bourque Commission recommendations are simply recommendations but the agreements negotiated to date will fulfil the Metis desire for self-government and self determination with certainty.

This is the ideal for Metis, to be in control of our own land, education, culture and ultimately our own destiny. That this has long been denied us has been a tragedy; that this is now being discussed as a possibility gives us hope for the future.

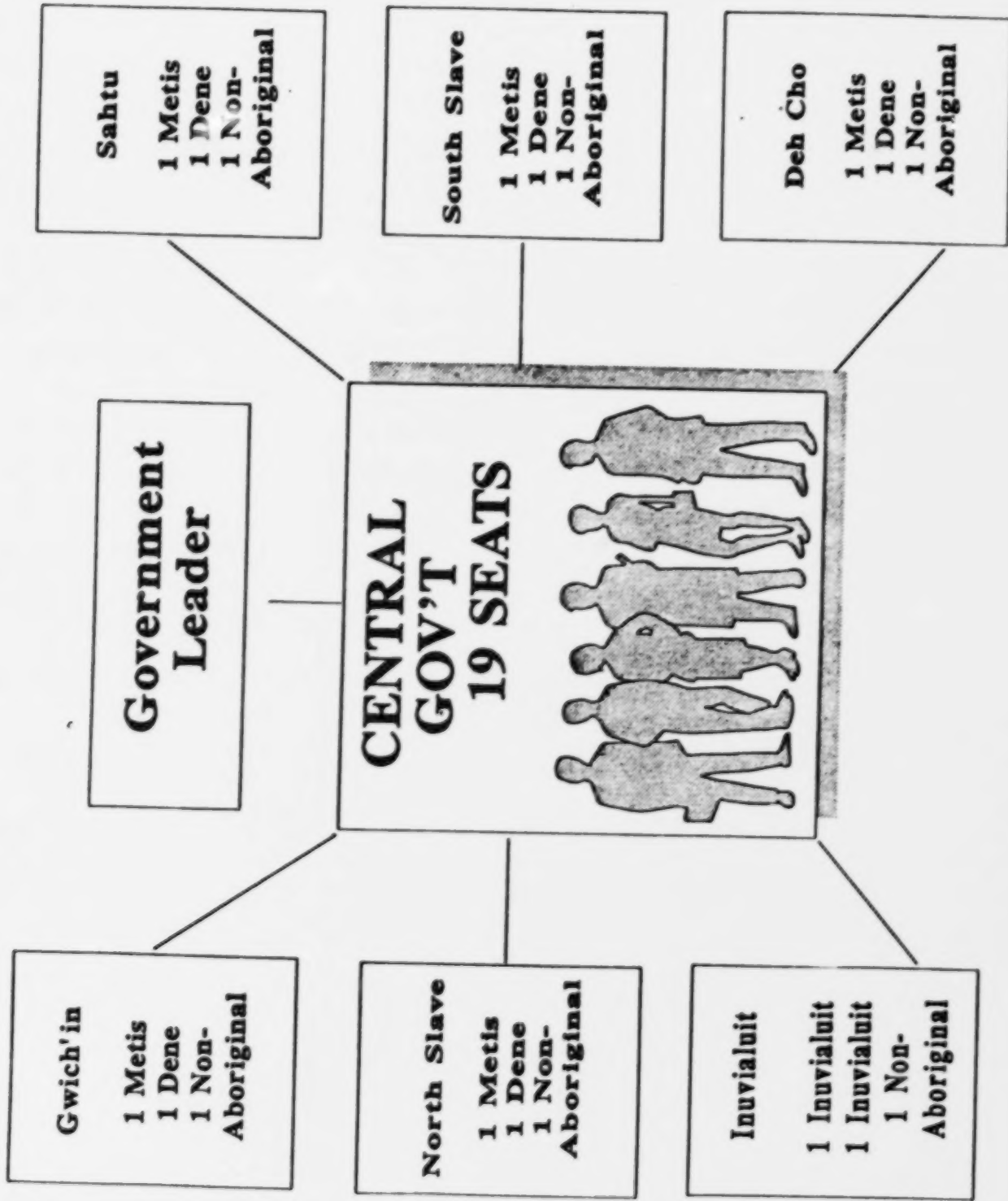


## VIII. APPENDICES

1. Graphic Model of Government
2. Metis Nation 20th General Assembly Motions 16, 13, 18.

## IX. RECOGNITION

The Metis Nation acknowledges and recognizes the excerpts taken from the document "Working Toward a Common Future," as presented by the Committee for Constitutional Development, 1992.







NORTHWEST TERRITORIES

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METIS NATION - NORTHWEST TERRITORIES  
20TH ANNUAL GENERAL ASSEMBLY  
FORT PROVIDENCE, N.W.T.  
AUGUST 7, 8 & 9, 1992

MOTION #18-09-08-92

WHEREAS the Metis First Nations of the N.W.T. strongly endorse the recommendations of the Committee for Constitutional Development and the protection of Metis rights;

AND WHEREAS division of the N.W.T. now seems inevitable by virtue of the May 1992 plebiscite and therefore the need for a new Western Constitution is more pressing than ever before;

AND WHEREAS the Government of the N.W.T. allowed the Committee for Constitutional Development to work independently in Phase I and must continue to ensure such independence during Phase II;

NOW THEREFORE BE IT RESOLVED THAT the delegates of the 20th Annual General Assembly strongly recommend that the Government of the N.W.T. immediately fund, as a priority, the second phase of the Committee's work;

AND BE IT FURTHER RESOLVED THAT such funding include sufficient funds for Metis organizations to be fully involved in the process.

MOVED BY:            CHARLIE FURLONG  
SECONDED BY:        JAMES CHRISTIE

AKLAVIK LOCAL #56  
FORT PROVIDENCE LOCAL #57

MOTION CARRIED UNANIMOUSLY

APPROVED:

  
GARY BOHNET, PRESIDENT







NORTHWEST TERRITORIES

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METIS NATION - NORTHWEST TERRITORIES  
20TH ANNUAL GENERAL ASSEMBLY  
FORT PROVIDENCE, N.W.T.  
AUGUST 7, 8 & 9, 1992

MOTION #16-09-08-92

WHEREAS the Metis Nation - Northwest Territories set priorities at its 19th Assembly;

AND WHEREAS the Metis Nation in assembly has reviewed a draft action plan with recommendations for addressing the priorities;

BE IT RESOLVED THAT this 20th Assembly of the Metis Nation accept the draft action plan and specifically directs its Executive and Board as follows:

FOR EDUCATION, THAT:

IN THE SHORT TERM:

- \* the Metis Nation secure the services of an education professional to assist the Locals in their efforts to improve education for their children; and

- \* each Metis Local establish a school support group to work with schools in Kindergarten to Grade 9; and

- \* each Metis Local support the development of an effective program for children with special needs; and

- \* the Metis Nation establish a program for counselling and tutoring Metis high school and Arctic College students and apprentices; and

- \* the Metis Heritage and culture be incorporated into local school curriculum programs; and

- \* that the Metis Nation work with the Locals to ensure that adult education and training programs like Pathways are aimed at the most pressing needs of the community; and

FOR THE LONG TERM:

- \* that the Department of Education with the participation of the Metis Nation conduct a comprehensive review of education programs, procedures and standards as well as public school administration and management in the Metis Homeland.

FOR MEDICAL BENEFITS, THAT:

- \* the Metis Nation leadership continue to work with the G.N.W.T. to complete an enumeration of Metis and then secure the necessary funding for extended health services to Metis.

FOR ECONOMIC DEVELOPMENT, THAT:

- \* the Metis Nation reaffirm M.D.C. as the preferred vehicle for investment and economic development; and

- \* the Metis Nation Executive work with M.D.C. to secure personnel from government and/or industry on secondment, or secure funding for M.D.C. to hire professional personnel to provide business development, planning and after care services for Metis business people in the Northwest Territories; and

- \* that the Metis Nation Executive request a review of the G.N.W.T. Economic Development strategy, especially as it applies to the classification of communities and Metis economic development affected by it.

FOR ALCOHOL AND DRUG PROBLEMS, THAT:

- \* the Metis Nation leadership develop a voluntary code of conduct regarding the use of alcohol, solvents and non prescription drugs, which will also promote zero tolerance for spousal assault and family violence; and

- \* that the Metis Nation seek financial and personnel resources to assist Locals in the healing necessary to recover from past problems of alcohol abuse and related behaviour; and

- \* that materials be developed to sensitize Metis youth to the costs and effects of alcohol and substance abuse.

FOR METIS HERITAGE AND CULTURE, THAT:

- \* the Metis Heritage Association remain the organization charged with documenting and publishing Metis heritage and culture in the Northwest Territories; and

\* the Metis Nation draw the attention of funding agencies to the inequality of funding that is provided for the documentation and preservation of Metis heritage, culture and language when compared to other aboriginal organizations; and

\* the Metis Heritage Association be encouraged to continue work in:

- Metis Oral History
- Metis Written History
- The Michif Language of the Metis
- Metis Heritage Materials for School Curricula

FOR SETTLEMENT OF METIS LAND CLAIMS, THAT:

\* funding for leadership and management training for Metis be incorporated into the overall self government and land claim negotiation strategy when it is developed.

FOR METIS HOUSING, THAT:

\* the Metis Nation - Northwest Territories support its affiliated Locals in certain housing projects within their geographic areas; and

\* the Metis Nation monitor housing policies and programs to ensure that programs like HAP and HIP (Home Improvement Program) continue and that funds are available to assist Metis elders, single Metis parent families and Metis families in poverty to maintain their homes in acceptable condition; and

\* N.W.T. Housing Corporation programs be reviewed so that Metis in larger urban centres are eligible for support on the same basis as if they live in smaller, more remote communities; and

\* that the N.W.T. Housing Corporation implement the tripartite agreement which allows for formal participation by the Metis in formulating housing policies and programs.

FOR LOCALS CORE FUNDING, THAT:

\* the inequality of core funding for Locals be brought to the attention of federal agencies who provide funding for aboriginal institutions and that core funding for Locals be part of the land claims and self government negotiation strategy.

FOR A METIS CENTRE, THAT:

\* the Metis Nation Board of Directors explore an optimum location and the financial feasibility of establishing a Metis Centre to provide office and related space for Metis Nation needs.

AND FURTHER THAT, in pursuing these actions the results be implemented in the spirit of the Mission Statement for the Metis Nation adopted by this Assembly as follows:

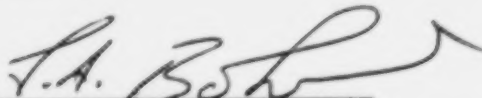
The Metis Nation is dedicated to the growth and personal development of all Metis persons who together will protect the natural environment and work to promote and enhance their culture, economy and political institutions in the Metis Homeland of the Northwest Territories.

MOVED BY: ROCKY SIMPSON  
SECONDED BY: JESSIE GAIRDNER

HAY RIVER LOCAL #51  
HAY RIVER LOCAL #51

MOTION CARRIED UNANIMOUSLY

APPROVED:

  
GARY BOHNET, PRESIDENT



**NORTHWEST TERRITORIES**

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**X1A 2P1**

**METIS NATION - NORTHWEST TERRITORIES  
20TH ANNUAL GENERAL ASSEMBLY  
FORT PROVIDENCE, N.W.T.  
AUGUST 7, 8 & 9, 1992**

**MOTION #13-07-08-92**

WHEREAS the Metis First Nations of the N.W.T. strongly endorses the recommendations of the Constitutional Commission and the protection of Metis rights;

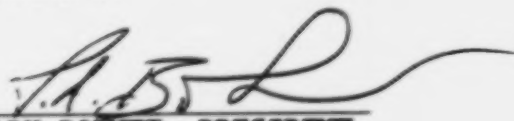
THEREFORE, BE IT RESOLVED THAT the delegates of the Metis First Nations recommend the second phase of the Constitutional Commission.

MOVED BY:            CHARLIE FURLONG  
SECONDED BY:        JAMES CHRISTIE

AKLAVIK LOCAL #56  
FORT PROVIDENCE LOCAL #57

**MOTION CARRIED UNANIMOUSLY**

**APPROVED:**

  
**GARY BOINET, PRESIDENT**





# **Boundary and Constitutional Agreement**



**for the  
Implementation of Division  
of the  
Northwest Territories  
between the  
Western Constitutional Forum  
and the  
Nunavut Constitutional Forum**



**Boundary and Constitutional  
Agreement  
for the  
Implementation of Division  
of the  
Northwest Territories  
between the  
Western Constitutional Forum  
and the  
Nunavut Constitutional Forum**

**January 15, 1987  
Iqaluit, Nunavut**





**T**he residents of the Northwest Territories decided by plebiscite on April 14, 1982 that the Northwest Territories will be divided.

On this day January 15, 1987 in the Northwest Territories, the Western Constitutional Forum (WCF) and the Nunavut Constitutional Forum (NCF) which together make up the Constitutional Alliance of the Northwest Territories have reached agreement on issues required to implement division, namely the location of a boundary and a number of other issues which relate to the establishment of two distinct political jurisdictions; an eastern region to be called Nunavut and a western region which is as yet unnamed.

This agreement and the constitutions for and boundary between the eastern and western regions are subject to formal ratification in accordance with Part I, section 5 of this agreement.

## **Part I: Matters of General Concern**

### **1. The Boundary**

The boundary dividing the eastern and western jurisdictions will have three basic components:

- a) the ratified boundary delineating the Dene/Métis and TFN Claims Regions from the 60th parallel to its point of intersection with the Inuvialuit Settlement Region;
- b) thence along the eastern boundary delineating the Inuvialuit Settlement Region and the TFN Claims Region to the point latitude 80° 00' N and longitude 110° 00' W, and
- c) thence along longitude 110° 00' W to the North Pole.

Attached as Appendix "A" to this Agreement is a map and written description of the boundary referred to above.

The Dene/Métis and Inuit overlap agreement dated May 9, 1986 and the overlap agreement between the Inuit and Inuvialuit provide for the protection of those rights and interests of the Inuit and other groups which extend across Claims and Settlement Region boundaries.

The new constitutions of the eastern and western jurisdictions will require the respective governments to protect actively in the exercise of their powers, the non-resident aboriginal rights guaranteed and interests recognized in the ratified overlap agreements. In order to protect and enhance these agreements, provision will be made in the constitutions of both jurisdictions to require co-operation between governments in decisions relating to non-resident aboriginal rights and interests.

For the effective management of trans-boundary interests generally, provision shall also be made for co-operation in management and use respecting resources, harvesting and other matters as may be agreed upon.

### **2. Constitutional Mandates and Agenda of the Forums**

The WCF continues to be responsible for the development of a constitution for the western jurisdiction and the NCF continues to be responsible for the development of a constitution for Nunavut. For greater particularity, each Forum is responsible for:

- a) reaching an agreement among Forum members on a new constitution;

- b) overseeing public consultation and the formal ratification of the proposed constitution, and
- c) in co-operation with the Government of the Northwest Territories, negotiating with the Government of Canada the nature and scope of the constitution, appropriate financing and revenue-sharing arrangements, and such other arrangements as are necessary for the creation of each territory.

The NCF and WCF commit themselves to completing the work outlined in subsections a), b) and c) above in accordance with Appendix "B" attached. In the interim the NCF and WCF shall also work together on research and strategies for the two constitutions. It is recognized that while the two constitutions will provide for public governments which respect the rights of all residents, the two constitutions must also recognize, affirm and guarantee the unique rights of the Inuit, Dene, Métis and Inuvialuit, including their land claims rights and their rights of self-government.

### **3. Regional Government**

Both Forums agree that communities will have the right to form regional governments within each jurisdiction and this shall be recognized in the two constitutions.

### **4. Government Services**

A major objective of division is to improve the quality of government and the delivery of services to citizens. Both Forums recognize that adequate funds must be provided by the Government of Canada to ensure that in the process of division, the level and quality of services presently available to N.W.T. residents and the rate at which capital needs are met are at least maintained. Both Forums commit themselves to pursuing a guarantee of adequate funding for division from the Government of Canada.

### **5. Ratification**

The members of the WCF are the Dene Nation, the Métis Association of the N.W.T., and appointed members of the Legislative Assembly of the N.W.T. residing in the western N.W.T. The members of the NCF are the Inuit Tapirisat of Canada, Tungavik Federation of Nunavut, representatives of each of the Regional Councils, representatives of each of the Regional Inuit Associations, and appointed members of the Legislative Assembly of the N.W.T. residing in the eastern N.W.T.

This agreement and certain decisions it contemplates are subject to formal ratification as follows:

- a) Ratification of the Dene/Métis and Inuit claims boundary between the two claimant groups, pursuant to the Dene/Métis and Inuit overlap agreement, and
- b) Approval of this Agreement by the Legislative Assembly and the other leaderships from each Forum whose representatives are signatories, and
- c) Ratification of the proposed boundary for division by a majority of voting residents in an N.W.T.-wide plebiscite. Following approval of the Agreement, the Forums shall ask the Office of the Legislative Assembly to conduct the plebiscite in a fashion similar to the way in which that Office conducted the 1982 plebiscite on division. In addition, the results of the plebiscite will be reported by total votes across the N.W.T., by community, and from within each proposed new territory. Suggested wording for the question is attached as Appendix "C" to this

Agreement. Both Forums must finally approve the question appearing on the ballot, and

- d) Ratification of the constitutions for the two jurisdictions when completed. Ratification in each jurisdiction shall be by the people of the jurisdiction, and shall respect basic democratic principles. The WCF will conduct a plebiscite of western residents to ratify a western constitution, unless when the constitution for a western jurisdiction is completed all WCF members agree on an alternate process. Non-approval of either constitution may be interpreted only as non-approval of a specific constitutional proposal and cannot abrogate or diminish in any way the right of self-government of the Inuit, Dene, Métis and Inuvialuit.

Division of the Northwest Territories may follow immediately upon the completion of this ratification process, and the two Forums are committed to achieving division by October 1, 1991. However, this ratification process notwithstanding, certain aspects of division may be implemented prior to division with the mutual agreement of the two Forums.

## **Part II: Matters of Concern to the Western Constitutional Forum**

The following matters are of exclusive concern to the WCF. While the NCF supports the aspirations of the residents of the western region to establish a jurisdiction suited to their needs, the NCF does not necessarily adopt the principles which follow and is not bound by them.

### **1. Principles of Constitutional Development for the Western Jurisdiction**

Aboriginal people will likely constitute a minority of the population in the western territory after division. Consequently the Dene, Métis and Inuvialuit are concerned that their political rights, their culture and their future as individuals and as aboriginal peoples be secured to their satisfaction in the new constitution for the western jurisdiction. Non-aboriginal residents of the north recognize and accept the need to address the concerns of the Dene, Métis and Inuvialuit within the context of a public government system based upon democratic principles. To this end all parties to the WCF agree that the following principles shall be addressed and procedure used in the constitutional proposal being developed by the WCF.

- a) The overriding objective of a new constitution is to build a system of public government which will protect the individual rights of all of its citizens and the collective rights of its aboriginal peoples and whose overarching principle is one of bringing peoples together.
- b) To accomplish this objective a new constitution must balance two principles:
  - i) The protection of individuals in that each and every bona fide resident of the western jurisdiction should have the right to participate in and benefit from public institutions, programs and services according to basic democratic principles guaranteed in the constitution, and
  - ii) The protection of the Dene, Métis and Inuvialuit in that each aboriginal community in the western jurisdiction shall be explicitly recognized in the constitution, and mechanisms shall be entrenched to enable each community to flourish as a distinct cultural entity regardless of its proportion of the total population.

- c) Some of the issues which shall be included in a new constitution in a fashion acceptable to all parties in order to balance these two principles are:
- i) Government decision-making should rest as closely as possible with those governed; people and communities should have control over those matters which affect them exclusively and they should have input in and influence over those decisions which affect them as well as others;
  - ii) Aboriginal rights relating to language, culture and any other political rights which are not included in claims agreements shall be entrenched in the constitution and means shall be found to help ensure that all aboriginal rights are protected;
  - iii) There shall be a guarantee of aboriginal participation in government and significant impact on decision-making in the future including perhaps exclusive aboriginal jurisdictions in limited areas of direct concern to aboriginal people; the focus would be on cultural matters and on the special relationship that exists between aboriginal peoples and the land and the political protections required to ensure its maintenance;
  - iv) Every level of government in the western jurisdiction must have sufficient powers, authority, and resources available to it to enable it to carry out its responsibilities; the level of funding available should be assured and predictable and the restrictions on the uses of these resources flexible;
  - v) In the negotiation of the proposed constitution with the Government of Canada, in the context of recognizing aboriginal self-government, and without prejudice to the negotiation of land claims, the further transfer of powers and jurisdictions from Ottawa shall be vigorously pursued, and
  - vi) The constitution or those parts which address each of these principles and objectives must not be amendable without the approval of aboriginal and non-aboriginal peoples.
- d) It is intended that if negotiations toward a western constitution succeed, they will result in a constitution whose relevant sections are designed to constitute, together with provisions in land claims agreements, the definition of aboriginal self-government in the western jurisdiction. Any such definition must fully reflect any right of self-government held by the Dene, Métis and Inuvialuit.
- e) All substantive decisions of the WCF on elements of the constitutional proposal must have the approval of all members.

## **2. Provisional Principles for Regional Government in a Western Jurisdiction**

As a result of efforts to negotiate a set of specific principles for regional government acceptable to the Inuvialuit, the WCF has adopted a set of principles applicable to regional government throughout the western jurisdiction. WCF members agree that if no aboriginal self-government provisions were to be included in the western constitution, the Beaufort-Delta region and the other regions of the western jurisdiction are guaranteed as a minimum these principles. However, if through the process of constitutional negotiations WCF members agree on a number of features which can be entrenched in a constitution as provisions for aboriginal self-government, WCF members cannot guarantee that trade-offs on these regional government principles will not be required. WCF members are confident that with co-operation, time and hard work they can build a constitution which will generously protect the interests of all aboriginal peoples as well as the rights of each individual



citizen. The WCF continues to offer full membership to the Committee for Original Peoples' Entitlement (COPE) and hopes that the Inuvialuit will take part in this work.

The specific provisional principles regarding regional government which WCF members accept are:

a) *Right to Form Regional Government*

Under the constitution of the western jurisdiction, community governments will have the right to form a regional government.

Subject to the following principles, the territorial level of government will be obliged to recognize and accept regional governments so formed.

b) *Formation and Membership*

A number of issues relating to the formation of regional governments and membership within them have yet to be decided. These include the method of deciding among and within communities whether the communities desire to form a regional government, the method of establishing regional government, the number of consenting communities required, and the terms upon which a community may exercise its right to withdraw its membership. The structure and accountability of the regional government will be determined by member communities in accordance with democratic principles.

c) *Funding*

Funding for any regional government will be fair and adequate. In particular a regional government will be assured that insofar as it assumes duties previously held by other governments, it takes over the funding previously available to those other governments.

d) *Mandate*

The WCF supports regional governments obtaining from the other levels of government: shared responsibility, management and control over certain programs and services, including aspects of education, economic development, local government relations, police services, game management, land use planning and management and of the powers to tax by way of property taxation, business taxes and license fees and amusement taxes.

The WCF does not at present support extending legislative authority to a regional government in these areas, but the WCF agrees that the community and territorial governments should be empowered to delegate such authority.

e) *Boundaries*

Regional government boundaries may describe such a geographic region as is appropriate considering the community composition of the regional government at any point in time. Boundaries would be established for administrative purposes only and would change as individual communities join or withdraw from a regional government from time to time.

f) *Official Languages*

Official working languages of a regional government will include the regional aboriginal language or languages, and English.

g) *Rights to Participate*

Every resident of the region shall have an equal right to participate in the regional government and to benefit from its programs and services, but programs and services and the manner of participating in government need not be identical for members of different cultural groups.

h) *Public Lands and Resources*

Public lands within regional government boundaries and outside community boundaries should be held by the territorial level of government.



Territorial authority over the management of sub-surface resources, on-shore and off-shore, should be exercised in a manner which reflects the needs and interests of all residents in the jurisdiction.

The regional land interests may be considered formally in land use planning and management.

## **Part III: Matters of Concern to the Nunavut Constitutional Forum**

The following matters are of exclusive concern to the NCF. While the WCF supports the aspirations of the residents of Nunavut to establish a jurisdiction suited to their needs, the WCF does not necessarily adopt the principles which follow and is not bound by them.

### **1. Principles of a Nunavut Constitution**

Over nearly five years the NCF has consulted with communities, individuals, representative groups and associations throughout Nunavut on the basis of accepted and familiar public conventions of Canadian constitutional practice in order to develop a Nunavut constitution:

- a) which strengthens Canadian sovereignty and democratic government in the north;
- b) which opens the opportunities of full Canadian public participation to the residents of Canada's arctic villages, towns and outposts; and
- c) which reflects the interests and meets the needs of Nunavut's unique Inuit and settler society.

This work has been consolidated in a document, *Building Nunavut: Today and Tomorrow*, approved in a Nunavut constitutional conference in Coppermine in early autumn, 1985.

Two further issues requiring particular attention are Inuit claims settlements and implementation. The Nunavut concept itself grew logically and naturally out of the movement to settle Inuit claims. NCF has always insisted that a special feature of Nunavut's larger constitutional foundation be the settlement of Inuit claims. By securing the aboriginal and historical economic rights of the permanent Inuit population, that population is free to join with all other residents in the open and free activity of governing Nunavut through conventional political processes. The complementarity of the institutions of claims settlements and of general politics (or "public government" as it has become known) for the efficient functioning and accountability of collective life within Nunavut must be assured.

The other issue is the importance of active involvement of the claims and other Inuit associations which participate in NCF in the design of implementing government in Nunavut.

### **2. Principles of Implementation**

NCF has long recognized that, moral and constitutional principles apart, Nunavut would succeed or fail through practical implementation of an administrative system responsive to the state of politics, culture, society and economy prevailing, and to the elected legislature of Nunavut.

Specific areas of concern have emerged from the research, consultations and consensus-building conducted by NCF. These include the following:

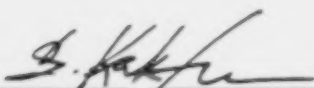
- a) Nunavut as the first native majority jurisdiction within the Canadian federation has a particular obligation to structure its institutions so as to reflect Inuit culture and Canada's pioneering work in giving aboriginal interests political and legal shape through the twin processes of claims settlements and national constitutional amendments. Nunavut should be a showcase of progress in these areas.
- b) The development of a workable form of regional authority within Nunavut, reflecting the strength of community life as the centre of Nunavut society and the need for a strong Nunavut government capable of dealing with the large challenges facing the Nunavut region, is a priority. Regional institutions in Nunavut have helped provide the experience and infrastructure needed for a successful Nunavut government.
- c) A policy of making Inuktitut an official language of Nunavut and a language of teaching is essential, and requires both statutory commitment and phased introduction.
- d) Decentralisation of administrative centres so as to spread both the benefits and impacts of public sector development has been agreed. This will also help attract local, qualified Inuit into jobs which otherwise would be too remote from their family commitments and their cultural district.
- e) The assurance of full human rights within Nunavut, especially to guarantee to non-Inuit their opportunities for personal fulfillment and social and political life, have been studied and a course of action proposed. Such assurances are an essential political commitment to NCF.
- f) The establishment of a functional federal-Nunavut working relationship and sharing of powers, responsibilities and revenues in respect of ocean areas is required.
- g) The contribution and role of the Inuit north to Canada's arctic sovereignty interests and the conduct of a northern foreign policy have been highlighted in Parliament's special international relations committee report of June, 1986, and in the federal foreign policy statement of December, 1986, and should be acknowledged in the Nunavut constitution.
- h) A suitable preamble to a Nunavut constitution highlighting the principles of conservation and wise management of the arctic environment and resources, the permanence of Nunavut as a cultural homeland of Inuit, and the fact that Inuit have actively sought and successfully negotiated full participation in the Canadian federation, should be prepared.

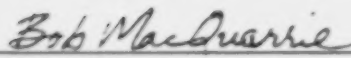
### **3. Principles of Federal-Nunavut Relations**

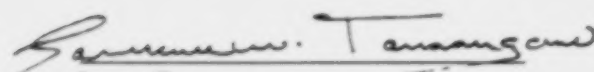
Inuit through their organizations and public bodies have developed a unique and uniquely productive relationship with federal authorities, despite periodic disagreements. It is proposed by NCF that this situation be continued in the development of the Nunavut government. As has been repeatedly stated in NCF documents, a core of secure rights relating to cultural identity and economic resources is required as the "critical mass" of a Nunavut political settlement. Beyond that, flexible arrangements for the acquiring of experience and sharing in management decisions by Nunavut authorities can be creatively explored and implemented through administrative arrangements.

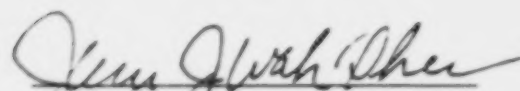
Executed this 15th day of January, 1987 at Iqaluit, Nunavut.

**For the Western  
Constitutional Forum:**

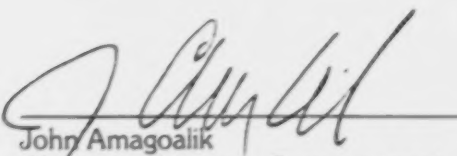
  
Stephen Kakfwi  
President, Dene Nation

  
Bob MacQuarrie  
MLA, Yellowknife Centre

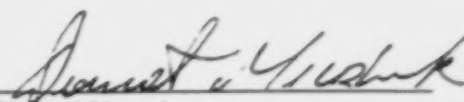
  
Larry Tourangeau  
President, Métis Association of the  
NWT

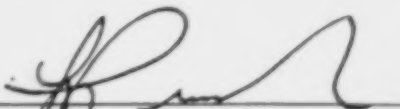
  
James Wahshee  
MLA, Rae-Lac La Martre

**For the Nunavut  
Constitutional Forum:**

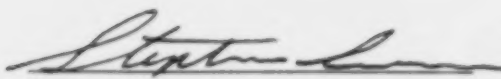
  
John Amagoalik  
Chairman, Nunavut Constitutional  
Forum

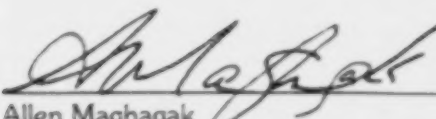
  
Rhoda Innuksuk  
President, Inuit Tapirisat of Canada

  
Doriat Milortuk  
Chairman, Tungavik Federation of  
Nunavut

  
Ludy Pudluk  
MLA, High Arctic

**Witnesses:**

  
Stephen Iveson  
Executive Director, WCF

  
Allen Maghagak  
Executive Director, NCF

on behalf of the staff and resource people who contributed to this agreement.

i  
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## Appendices

## Appendix "A"

The tentative boundary is described as follows:

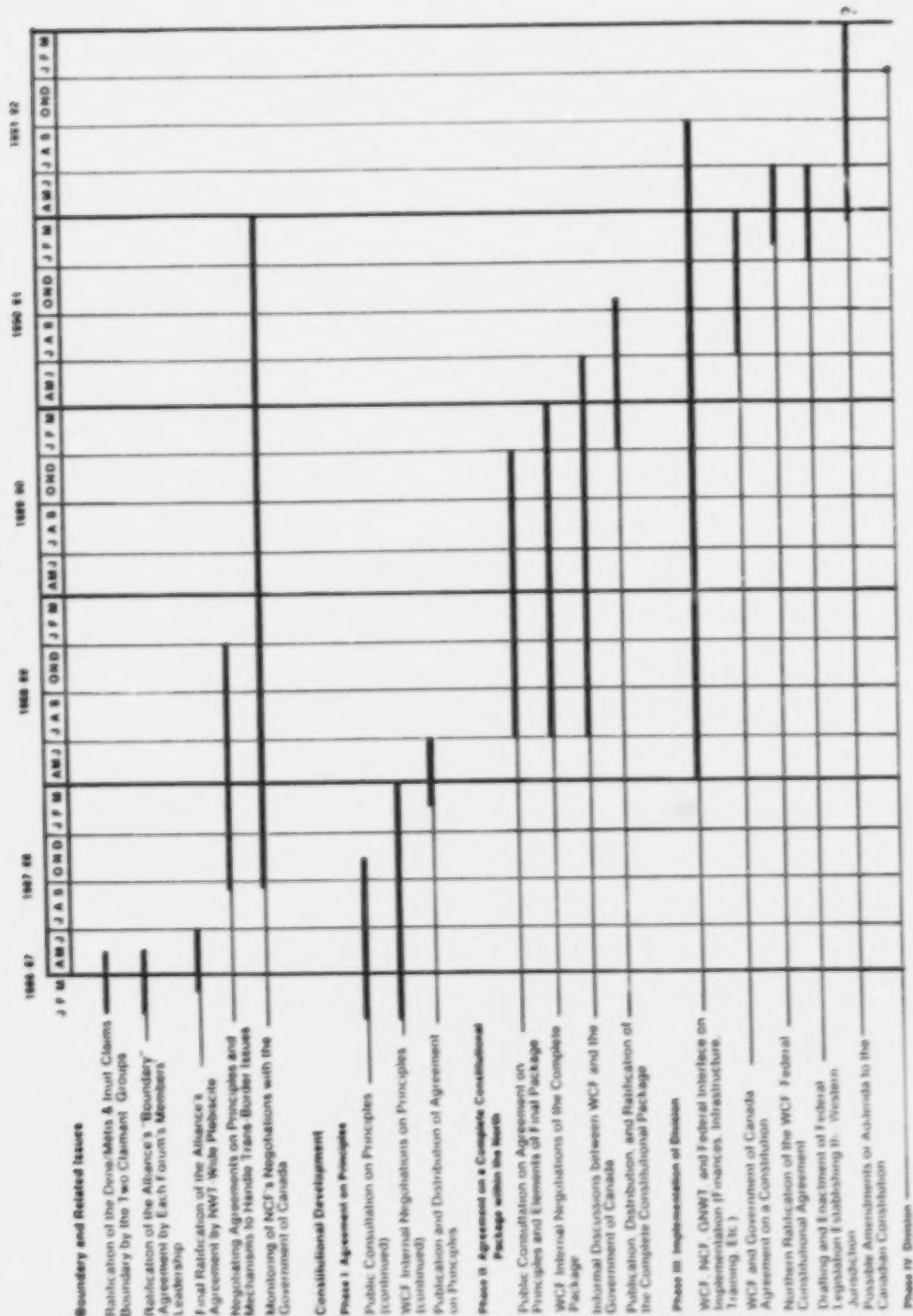
"Commencing at the approximate point latitude of 60° 00' N and longitude 103° 10' W, and thence along the line identified as the Single Line Boundary in Schedule "A" of the Overlap Agreement between the Dene/Métis and the Tungavik Federation of Nunavut dated May 9, 1986 to the point of intersection with the boundary of the Inuvialuit Settlement Region at the approximate point latitude 68° 00' N and longitude 120° 50' 51" W, and thence along the boundary of the Inuvialuit Settlement Region to the point latitude 80° 00' N longitude 110° 00' W, and thence northerly to the North Pole along longitude 100° 00' W.





# Appendix "B"

## Western Constitutional Forum Timechart of Activities



## Appendix "B"

(continued)

### NCF Draft Schedule of Events

|                     |                                                                                                  |
|---------------------|--------------------------------------------------------------------------------------------------|
| January 1987        | Constitutional and Boundary Agreement by the Alliance                                            |
| February 1987       | Endorsement of agreement by the N.W.T. Legislative Assembly                                      |
| Spring 1987         | Ratification of the agreement by the two constituents — Nunavut and the Western Territory        |
| Fall 1987           | Nunavut Constitution Draft                                                                       |
| March 1988          | Review of Nunavut Constitution by Nunavut Leadership                                             |
| Sept/October 1988   | Ratification of Nunavut Constitution by residents of Nunavut (Option: Constitutional Conference) |
| Remainder 1988-1990 | Negotiations between Nunavut and the Federal Government/or Implementation of Nunavut Government  |

## Appendix "C"

### Suggested Plebiscite Question

Upon the recommendation of the Ninth Legislative Assembly, a question was put to residents of the N.W.T. on April 14, 1982 asking whether the N.W.T. should be divided. The division of the N.W.T. was approved by a majority and work to establish a boundary agreement was undertaken.

A proposed boundary agreement has now been approved by the Constitutional Alliance of the Northwest Territories and the Tenth Legislative Assembly. The boundary agreed upon is described as follows and outlined on the attached map. If this boundary is approved by a majority of voting residents, a plebiscite will later be held on a proposed constitution in each of the new territories.

On these terms, do you agree with the proposed boundary for division of the N.W.T.?

Yes (    )

No (    )

**Official Summary of the  
Boundary and Constitutional Agreement  
between the  
Western Constitutional Forum  
and the  
Nunavut Constitutional Forum  
January 15, 1987  
at  
Iqaluit, Nunavut**

The agreement is between the two Forums.

It acknowledges that the decision to divide was made in the '82 plebiscite and the agreement spells out the terms, conditions and schedule for division.

The boundary is the eastern boundary of the Inuvialuit Settlement Region and the line between the Dene/Métis and Inuit claims regions. The latter line still has to be ratified under their claims overlap agreement.

Provisions are included for Nunavut and western territorial government cooperation in protecting the rights of the aboriginal claimants on either side of the boundary, and in managing trans-boundary interests generally.

The two Forums will continue to be responsible for developing new constitutions in each jurisdiction and negotiating, in cooperation with the GNWT, the constitutional proposals with the federal government.

The target date for division is October 1, 1991. Before division may take place

- the claims boundary must be ratified by the aboriginal organizations concerned,
- the leaderships of the member organizations of the two Forums, and the Legislative Assembly, must approve the agreement
- the boundary must be ratified by N.W.T.-wide plebiscite
- the residents of each jurisdiction must ratify their new constitution. This will be by plebiscite unless agreed otherwise.

Aspects of division may be implemented before the ratification process is complete, with the agreement of both Forums.

The agreement recognizes that division must not impair the quality of government services and expected rates of capital funding in the territories, and commits both Forums to ensuring that the federal government makes the necessary funds available.

While they have declined to become members of the WCF and thus are not party to the agreement at this time, the Inuvialuit have been assured of minimum guarantees for regional government in any constitutional agreement if no other forms of aboriginal self-government are included. Other regions have been assured of the same guarantee. The WCF also continues to offer full membership to the Inuvialuit. Any new constitution in the western jurisdiction will require the approval of each member of the WCF before being submitted to the public for ratification.

Both Forums have endorsed the right of communities to form regional governments, a right which will be recognized in both constitutions. Both Forums are committed to permitting communities to design workable forms of regional governments which



assist them to meet the needs of their residents within an overall system of government which reflects the community-based nature of northern society and provides for strong territorial or provincial governments. The WCF has also set out in the agreement more particular principles concerning the establishment, powers and resourcing of regional governments. These principles will be applicable to the Beaufort-Delta and other regions in the western jurisdiction.

Each Forum has also stated in the agreement the principles which will underlie the development of each constitution.

In the west, these principles include:

- balancing the individual rights of all citizens with collective rights including the land claims rights and self-government rights of the resident aboriginal groups;
- bringing government decision-making as closely as possible to those governed;
- providing each level of government within the jurisdiction with sufficient authority and resources to carry out its responsibilities;
- pursuing the further devolution of powers from Ottawa in a manner that does not prejudice land claims or aboriginal self-government;
- constitutional entrenchment of aboriginal rights not included in land claims such as language, cultural, and certain political rights;
- guaranteeing aboriginal participation in government and significant impact on decision-making including possibly exclusive aboriginal control in limited areas of direct concern to aboriginal peoples;
- guaranteeing to the aboriginal and non-aboriginal peoples that the constitution or certain parts of that constitution cannot be amended without the approval of both peoples.

In the east, these principles include:

- recognition of the role of Nunavut in strengthening Canadian sovereignty and democratic government in the north;
- providing full Canadian public participation in government to all residents;
- meeting the needs and interests of Nunavut's unique Inuit and settler society;
- recognition and protection of land claims rights in the Nunavut constitution and the efficient coordination of claims and government institutions, and
- designing decentralized administration in Nunavut capable of meeting the unique needs of Nunavut efficiently.

For further information contact:

**Western Constitutional Forum**  
P.O. Box 1589  
Yellowknife, N.W.T  
X1A 2P2  
(403) 920-2667

**Nunavut Constitutional Forum**  
Suite 300, 63 Sparks Street  
Ottawa, Ontario  
K1P 5A6  
(613) 594-0158

**Memorandum of Understanding  
between the Nunavut Constitutional Forum  
and the Western Constitutional Forum  
Concerning Recommendations  
to the Legislative Assembly**

Where significant steps have been taken in recommending a boundary for division to the Legislative Assembly and the people of the Northwest Territories

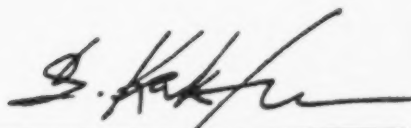
and whereas the proposed boundary Agreement aims at achieving division by October 1, 1991, which entails a critical period of preparation, planning and pre-implementation;

and whereas these important matters should be undertaken with balanced representation from both prospective new territories.

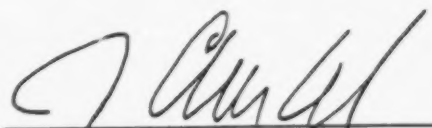
It is therefore agreed that the Constitutional Alliance of the Northwest Territories recommends to the Legislative Assembly of the Northwest Territories that serious consideration be given to the principle that representation from each of the proposed new territories be guaranteed equally on the Executive Council, among Officers of the Legislative Assembly and on certain territorial boards with a territorial mandate.

And further, that serious consideration be given to alternating the Government Leader between each of the proposed new territories, and to holding alternate sessions of the Legislative Assembly in each of the proposed new territories.

Dated this 15th day of January, 1987.



Chairman  
Western Constitutional Forum



Chairman  
Nunavut Constitutional Forum

# Constitutional Alliance of the Northwest Territories

## Press Release Boundary Agreement Reached

January 15, 1987 — Iqaluit, Nunavut

Today marks an historic day for the residents of the Northwest Territories as the two Forums of the Constitutional Alliance signed an agreement on the boundary to create Nunavut Territory in the Central and Eastern Arctic; and a new territory in the west, as yet unnamed, which includes the Beaufort-Delta and Mackenzie Valley Regions.

After four years of discussions and negotiations between the Nunavut Constitutional Forum (NCF) and the Western Constitutional Forum (WCF) on the boundary and constitution building, the hard work and patience has finally paid off.

The main components of the agreement are:

1. A boundary which places the Dene/Métis and Inuvialuit Land Claims areas in the west and the Inuit Land Claims area in Nunavut.
2. A ratification process which includes a N.W.T.-wide plebiscite as soon as possible.
3. Principles for constitution building by the two Forums for the two new proposed territories.

John Amagoalik, Chairman of the NCF stated that this historic moment will insure the political security required to compliment the Land Claims Settlement being negotiated by Tungavik Federation of Nunavut.

"With this agreement, the Inuit can now begin the process of building a government that is wholly their own, created from the grassroots up, and most of all an appropriate model for self-government for the Inuit of Canada.

Stephen Kakfwi, the Chairman of the WCF said, "We are very happy to have reached an Agreement which allows the Inuit to fulfill their dream for Nunavut.

"At the same time this agreement means we in the west finally have an unhindered opportunity to pursue our own dream of a new form of government which respects our aboriginal right to self-government within a public jurisdiction serving all residents.

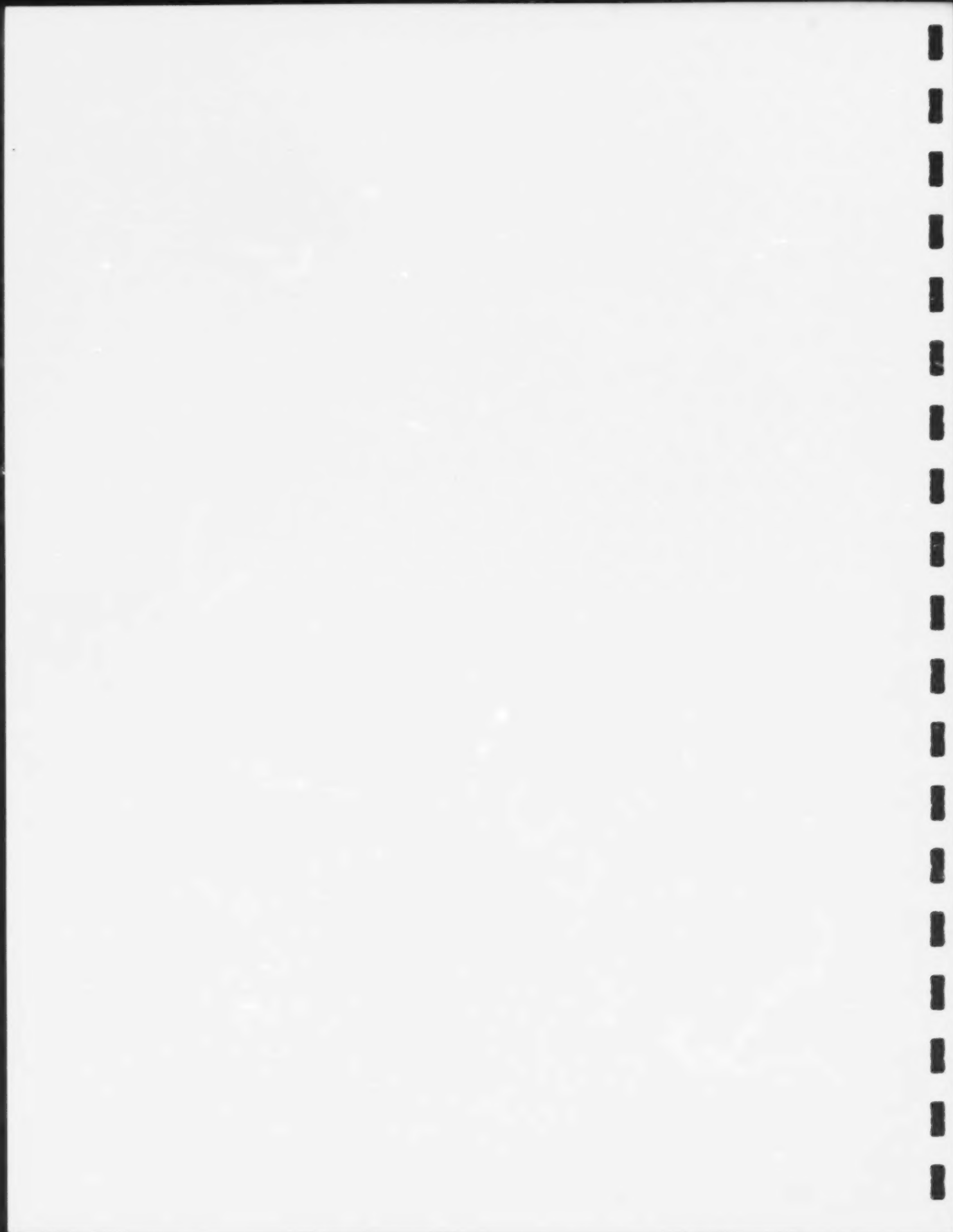
"Our task ahead is to make those aspirations a reality. I earnestly hope that it will be a co-operative effort with the Inuvialuit. I look forward to their membership on the WCF and active participation."

Billy Day, President of the Committee for Original Peoples' Entitlement attended the meeting as an observer.

The next stage for the Constitutional Alliance will be to table the agreement in a report to the Legislative Assembly of the N.W.T. at their next sitting beginning February 11, 1987 in Yellowknife. To begin the process of officially dividing the N.W.T. the Alliance has a separate agreement recommending to the Assembly interim measures concerning representation on the Executive Council, the Assembly and certain territorial boards.

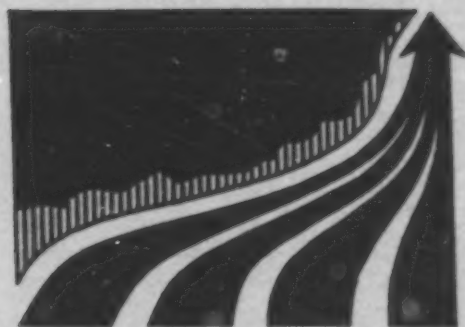
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and Western Constitutional Forum.







# **WORKING TOWARD A COMMON FUTURE**



**COMMISSION FOR  
CONSTITUTIONAL DEVELOPMENT**



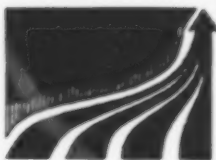
**COMMISSION FOR CONSTITUTIONAL DEVELOPMENT**

**PHASE I REPORT:**

**WORKING TOWARD A COMMON FUTURE**

**April 1992**





COMMISSION FOR  
CONSTITUTIONAL  
DEVELOPMENT

April 1992

FOREWORD

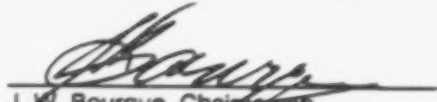
The Committee of Political Leaders of the western Northwest Territories established the Commission in June, 1991 with instructions to complete Phase I before the boundary plebiscite.

This report represents the fulfilment of those instructions. We have examined the constitutional constraints and opportunities that are available in the current Canadian context. We have consulted the public, who will be the citizens of the New Western Territory, in two sets of public hearings, and considered all the information presented to us.

The principles and recommendations in this report are the best effort that we can produce in the time available. The research done for us by legal counsel and consultants was important in arriving at this point but did not influence the report as much as the people who shared their visions for the future with us.

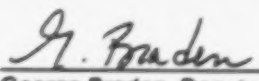
The result of these efforts is a combination of recommendations that is not the ideal that any one of us or the public may wish. It is, however, a valuable starting point for the next phase, which must give serious and detailed attention to the principles and recommendations made here. It is important that the New Western Territory be governed by a workable constitution which ensures that the wealth of our land is shared equitably and that our citizens have opportunities to achieve their full potential.

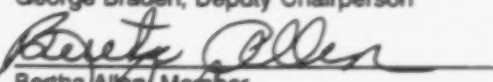
We thank the members of the Committee of Political Leaders for the confidence they placed in us. We also thank the people who shared their vision of the New Western Territory with us. You have made our work challenging and exciting.

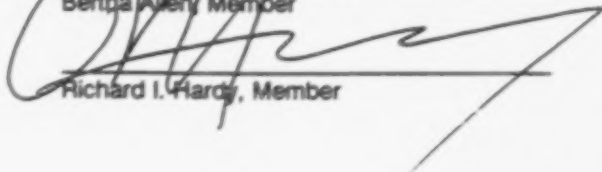
  
J.W. Bourque, Chairperson

  
Francois Paulette, Member

  
Les L. Carpenter, Member

  
George Braden, Deputy Chairperson

  
Bertha Allen, Member

  
Richard I. Hardy, Member





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## I INTRODUCTION

### 1. Creation of the Commission

The people of the Northwest Territories are blessed -- or cursed, as some would have it -- to live in interesting times. Ten years ago a majority of them voted "yes" to dividing the territory.

Eight years ago the Inuvialuit became the first aboriginal group in the territory to conclude a modern land rights agreement with the Government of Canada. Five years ago the leaders of the Inuit of the eastern part of the territory, the Dene, the Metis and the Legislative Assembly signed the Iqaluit Agreement. This agreement was not signed by the Inuvialuit and was rejected by some of the Dene chiefs. Two years ago the Dene/Metis and the government of Canada terminated 20 years of comprehensive claim negotiations.

Most recently the Gwich'in have ratified and signed their own modern land rights agreement which includes an undertaking by the governments of Canada and the Northwest Territories to negotiate self government agreements with them.

In the eastern part of the territory the Inuit have also negotiated a modern land rights agreement. If that agreement is ratified it will lead to the division of the territory into two new territories: Nunavut and the yet unnamed western portion which is referred to as the New Western Territory in this report.

At the national level, discussions on constitutional renewal have created a momentum by which First Peoples may achieve recognition of their inherent right of self government. At the territorial level, this could be expressed in forms of government and decision making which reflect the systems that were in place before the current form of government was imposed on First Peoples.

Political leaders in the western Northwest Territories recognized all of these developments as an opportunity to develop a people-driven process to draft a constitution for the New Western Territory. Representatives from the major aboriginal organizations and from the government of the Northwest Territories came together in an informal group of political leaders known as the Committee of Political Leaders. They established a commission made up of individuals who have the trust and confidence of the distinct elements of society in the New Western Territory.

Members of the Commission for Constitutional Development include individuals nominated by the Inuvialuit Regional Corporation, the Dene Nation, the Metis Nation, the Sahtu Tribal Council, the Government of the Northwest Territories and western members of the Legislative Assembly. All members were endorsed by the

Committee of Political Leaders. The chairperson of the Commission was chosen by consensus of the political leaders.

## **2. The Work of the Commission in Phase I**

One of the Commission's tasks was to give the public basic information about options for constitutional development in a New Western Territory before the May 4, 1992, boundary plebiscite.

To that end, they reviewed the principles and proposals set forth over the years for constitutional development by all groups in the Northwest Territories. They distributed a paper, "How Can We Live Together?", that posed questions and presented ideas for consideration and discussion. To help the public respond, the Commission funded municipal governments, First Peoples' organizations and other public interest groups. Public hearings were held in 12 communities in November and December.

In all, a total of 123 persons appeared before the Commission to express their views in the first round of hearings. The Commission received 39 written submissions in public hearings and six people submitted written briefs that were received by mail.

An interim report, produced in February, 1992, summarized the results of this effort and the work done for the Commission by a team of legal and constitutional advisors. The purpose of that report was to present the views of the people on the principles that should guide constitutional development, and to integrate these views into preliminary statements of principle for public discussion.

The interim report also proposed, as a mechanism to permit the varied governmental structures and responsibilities desired by residents, a new district order of government.

Individual Commission members held information sessions throughout the western Northwest Territories in February and March. Public hearings were held in another nine communities in March and April. The purpose of these meetings was to fill in gaps and to make sure that the Commission had heard people well, and reflected their thinking in the interim report.

Further funding was provided to municipal governments, First Peoples' organizations and other public interest groups, to respond to the Commission's interim report. In all, 75 people made presentations and 44 written submissions were received in this second round of public consultation.



Commission members were deeply impressed by the work that some people put into their presentations, even without funding. They would especially like to thank the many individuals who took the time to make presentations on their own.

The members of the Commission want to make a special acknowledgement of the work done by the Town of Hay River. This municipality conducted an extensive public consultation process on its own. As a result, participation by the residents of Hay River in the Commission's second round of hearings was exceptional. While all of the people of Hay River may not agree on all of the issues, they have embarked upon a dialogue that will lead to a better understanding of those issues.

Many of the people who made presentations to the Commission stressed the importance of understanding the unique history and cultural heritage of the Northwest Territories. The Commission would like to encourage all residents to learn about this history and heritage, by talking to elders in their communities as well as by reading and discussing important source documents in First Peoples, Canadian and Northwest Territories history.

This report cannot provide a detailed examination of all the ideas and recommendations received by the Commission. Those seeking more information are encouraged to consult the Northwest Territories Archives, where copies of all the submissions received by the Commission, as well as transcripts of both rounds of public hearings, are housed.

Public response to the ideas presented in the interim report was generally favourable. This final Phase I report therefore includes principles and ideas similar to those in the interim report, with some refinements. To show people what a constitution for a New Western Territory might look like, a first draft, based on the principles in this report, is included as chapter three.

The members of the Commission have now gone as far as their mandate permits them to go in developing constitutional principles and recommendations in Phase I. It is now up to the Committee of Political Leaders and the people of the New Western Territory to take the next steps.

The principles proposed in this report must be developed into a detailed proposal. This process is described in the Commission's Terms of Reference as Phase II. It is not known at this time whether or when Phase II will proceed, but recommendations for the further development and ratification of a New Western Territory constitution are included in this report. One of the Commission's major recommendations is that further development of a constitution should take place through representative and constituent assemblies over the next two years.

While the Commission's mandate directed that serious consideration be given to recommendations from groups such as the Western Constitutional Forum and technical advice from experts, the main source of their ideas, advice and inspiration has been the people of the New Western Territory.

### **3. What Is a Constitution and Will It Solve All Our Problems?**

Before reviewing what the Commission heard, it is worth stating again what the basic elements of a formal constitution are.

---

The basic elements of a formal constitution are:

- \* the name and description of the geographic area to be covered by the constitution;
  - \* a definition of the people to be governed by the constitution, together with a statement of their unique and shared experiences, values, interests and aspirations;
  - \* statements of any special rights and freedoms enjoyed by people governed by the constitution;
  - \* a description of the orders of government, if any, and the ways authority and responsibility are divided among the orders of government;
  - \* the kinds of institutions which will make laws, decisions and settle disputes in these orders of government;
  - \* how people are appointed or elected to serve in these governing institutions; and
  - \* the way a constitution is changed or amended.
- 

It was the Commission's job to provide principles, under each of these headings, to guide the development of a New Western Territory constitution. That is what they have done in this report.

The members of the Commission want to stress that the residents of the New Western Territory are not making their constitution in a vacuum. Everyone is constrained by a variety of present and future legal instruments, which set limits on what they can and cannot do. Among these are Treaties 8 and 11; modern land rights agreements; and the Canadian Constitution itself, which is now in a process of change.

Will a new constitution solve all of the long-standing problems of the western Northwest Territories? Will it bring about an era of respect for all, sharing, caring,

and harmony? Will it lead to a time when people of the New Western Territory will be able to pay their own way?

Unfortunately the answer to all of these questions is no. The Commission has more modest hopes for the document that will be the final product of the process begun a year ago by the Committee of Political Leaders.

The Commission's hearings and community visits gave people a chance to be heard on a wide range of issues, not all of which are constitutional in the formal sense noted above. Some had high expectations for a new constitution. Many expressed hope for a new, different and better way of life in a New Western Territory. The Commission heard the voices of many peoples during community visits and hearings. Representatives of the First Peoples, francophones, black Canadians, and non-aboriginal Canadians of European descent, among others, spoke before the Commission.

First Peoples and francophones want constitutional guarantees of their special collective rights. All peoples want to be respected and recognized as distinct, just as it is the deepest desire of individuals to be respected and loved for themselves within their families and communities.

In the communities they visited, the Commission heard about Treaty First Nations and their chosen governments being ignored and treated as unimportant by other governments. They heard people express the frustration of years of economic inequality between the small communities and the larger ones. They heard from women who are tired of violence and who spoke for others too frightened to speak for themselves.

They heard from youth, the disabled, senior citizens, organized labour, environmentalists, women's groups, chambers of commerce, municipalities, a political party and many individuals. Some of these people wanted to see their individual rights to equal treatment under the law affirmed in the new constitution. What others wanted was not so much equality as equity, or fairness in sharing the wealth of our society.

That means, for example, equality of opportunity, pay equity or affirmative action for disadvantaged groups. It means human rights, and rights for workers. It means regional equalization payments and the responsible use of our land in the creation of wealth.

They also heard strongly felt pleas for a healing process for families and communities to be completed, before these people can govern themselves. Alcoholism and family violence have taken a toll in too many homes in the New Western Territory.

---

There were contradictory views about many issues. Can a constitution reconcile these conflicting views?

---

Others suggested that, in a broader sense, the peoples of this territory need to heal the divisions among themselves. Some people felt that some minimum standards for the basic necessities of life should be guaranteed to all citizens.

Finally, there was a wide variety of views on governmental structures, powers and political processes. People wanted everything from exclusive Treaty First Nations governments, to mixed public and aboriginal community governments, to public or aboriginal regional governments, to a strong central government, with everything from municipal to provincial or greater powers. Representation was an especially difficult issue.

---

Can a constitution make peoples of different governmental traditions live in harmony with each other and the land?

---

A New Western Territory constitution cannot, and need not, be all things to all people. Some of the guarantees people were seeking are now to be found in the national constitution, in the Canadian Charter of Rights and Freedoms and in existing constitutional protection of aboriginal and treaty rights. Others, such as the First Peoples' inherent aboriginal right of self-government, may soon come about through national constitutional renewal.

The Commission's work served in some cases to raise people's awareness of rights they already have. They recognize that even when people know their rights, going to court to enforce those rights can be difficult and costly. New territorial statutes, improved enforcement of existing laws, and social programs may offer better and more immediate solutions to problems of equity and caring than constitutional proposals.

A law, even the supreme law of a particular land, is only a piece of paper. If the people want a sharing, caring, harmonious and respectful society, it is up to them to practise these values in their daily lives and to demand that their governments live up to them.



The new constitution will not come into effect until 1999 at the earliest, according to the Commission's understanding of the proposed schedule for the creation of Nunavut.

---

Do the people of the New Western Territory want to wait until 1999, or longer, for human rights legislation, or to begin a healing process?

---

When the constitutional development process is finished, the people of the New Western Territory will know a little better who they are and who their neighbours in this territory are. The people will have said what they think they can reasonably expect from each other and their governments. The members of the Commission for Constitutional Development believe this process will lead to a workable, and lasting, constitution for the New Western Territory.

In the next phase, they hope to see two different ideas of a constitution come together. One is the idea of a constitution as a written law, covering the topics outlined above. The other is an older vision of a constitution, common to many New Western Territory residents, as a set of customs that cannot be separated from a people's way of life.



## II PRINCIPLES FOR A NEW CONSTITUTION

### 1. Introduction and Definitions

The Commission's Terms of Reference require that their Phase I report recommend principles which should form the foundation of a constitution. The purpose of this chapter is to make a number of recommendations, which are based upon presentations made by members of the public, legal and technical advice, and the views of Commission members. The discussion which follows is organized in the general order of subjects that might appear in a New Western Territory constitution.

The words used to refer to different aboriginal peoples, smaller groups of them, and their governing bodies, are often vague or confusing. The terms used in the remainder of this chapter are defined below.

---

Readers are asked to note the following definitions:

- \* "First Peoples" means the Inuvialuit, the Gwich'in, the Hare, the Slavey, the Tli Cho, the Chipewyan, the Cree and the Metis;
  - \* "Treaty First Nations" means the Indian band governments located in the New Western Territory except those in Fort McPherson, Arctic Red River, Aklavik and Inuvik;
  - \* "Metis First Nations" means the Metis Nation-Northwest Territories affiliated locals, except those in Fort McPherson, Arctic Red River, Aklavik and Inuvik;
  - \* "Gwich'in First Nations" means Gwich'in First Nation Authorities as defined in Appendix "B" to the Gwich'in Comprehensive Land Claim Agreement;
  - \* "Inuvialuit First Nations" means Inuvialuit community corporations established pursuant to chapter 6 of the Inuvialuit Final Agreement;
  - \* "Aboriginal First Nations" means Treaty First Nations, Metis First Nations, Gwich'in First Nations and Inuvialuit First Nations.
-

## 2. Name and Geographic Area for the New Western Territory

The constitution must include a name for the New Western Territory. As is the case with other provinces and territories in Canada, the name of each geographic and political entity is symbolic of its residents and their language, history, environment and future aspirations. In the New Western Territory, all First Peoples have a word or name, such as Denendeh or Nahendeh, describing their homeland.

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The Commission recommends that the name for the New Western Territory be taken from a First People's language.

---

This idea met with universal approval in the second round of hearings. Some people had suggestions for a process to select the name, including a referendum.

---

The Commission recommends that a selection process for the New Western Territory name be decided upon in Phase II.

---

The exact geographic area of a New Western Territory may not be known for some time. However, every constitution must state the geographic area over which it applies.

---

The Commission recommends that the description of the geographic area of the New Western Territory be addressed in Phase II.

---

### 3. Foundations of the New Western Territory

#### i) The Peoples

One objective of the national constitutional reform process is the development of a Canada Clause that would affirm Canadians' identity and aspirations and convey a sense of how values, traditions, culture and experience are interpreted and reflected in the rules of the Canadian Constitution. Commission members believe that a New Western Territory constitution requires a preamble which captures the spirit and vision of our land and peoples.

Most people at the second round of hearings agreed with the intent and substance of the specimen preamble provided in the Commission's interim report, although many had comments on the wording. This clause is the best place to recognize and celebrate the distinct peoples and unique history of the New Western Territory, as well as stating the values and aspirations we have in common. First Peoples should be recognized in this section as founding peoples of the New Western Territory. All peoples should be celebrated for their unique history, and for their contribution to the rich mixture of cultures that makes up New Western Territory society.

---

The Commission recommends that description of the peoples of the New Western Territory, similar to the following, be included in a preamble:

"The New Western Territory is home to many peoples.

"Among these are the First Peoples who have lived and continue to live in harmony with the land and in accordance with their own laws and customs, in societies that have sovereign relations with each other. The First Peoples are recognized as founding peoples of the New Western Territory.

"In addition to the First Peoples, many other groups and individuals have chosen to make the New Western Territory their home. They or their ancestors have come from all parts of the world. These groups and individuals are recognized as an integral part of the society of the New Western Territory."

---

#### ii) Common Values

The Commission's interim report proposed a statement of common values, which remains in the draft constitution in chapter III. Based on what people said in the

second round of hearings, this statement needs a rewrite. The people of the New Western Territory need to recognize the common themes that bring them together. Some proposed themes for the preamble to a constitution are noted below.

---

The Commission recommends that the following common values of New Western Territories residents be stated in a constitutional preamble:

- \* recognition of the land itself as the source of our spiritual, emotional, mental and physical well-being;
  - \* a commitment to live in balance with the land;
  - \* the desire to restore good feelings, balance and harmony among all New Western Territories peoples;
  - \* the belief that all authority to govern belongs to the people and flows from them to their institutions of government;
  - \* respect for our distinct cultures, traditions and languages;
  - \* the desire to create a balance between the rights of the individual and the collective rights of peoples.
- 

### **III) Fundamental Responsibilities**

The Commission also heard reference, in our second round of hearings, to a desire for a statement of responsibilities to balance the constitution's statements of residents' rights.

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The Commission recommends that the issue of whether or not to include in the constitution a statement of the basic responsibilities of residents of the New Western Territory be examined in Phase II.

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#### 4. Special Rights

##### 1) Fundamental Rights

An important element of any constitution in a modern democratic society is the definition of the fundamental rights and freedoms of all residents. In developing a definition, the Commission noted in its interim report, a balance must be struck between a constitution which is for people as opposed to governments, and the reasonable limits which government can put on the rights and freedoms of individuals.

The Commission summarized the main rights defined in the Canadian Charter of Rights and Freedoms in their interim report. This created more confusion than clarity, in that some groups, such as the disabled, for whom rights are spelled out in the Charter, worried that this summary left them out of a New Western Territory constitution. This was not the Commission's intent. The full text of the Charter has been reproduced as an appendix to this report, and some of the sections which are most relevant to the New Western Territory constitution are quoted in full below.

The Commission received some opposition to reaffirming the Charter, as unnecessary. But the Charter, as part of the Canadian Constitution, is one of the elements of the framework within which a New Western Territory constitution must operate.

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The Commission recommends that the New Western Territory constitution should reaffirm the rights and freedoms that are set out in the Canadian Charter of Rights and Freedoms.

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The Charter guarantees rights and freedoms "subject only to such reasonable limits as prescribed by law in a free and democratic society." It provides a basic guarantee to all citizens of rights for participation in the democratic process, limits the terms of legislatures and governments, and grants assurances of freedom of speech, religion, assembly and association; rights in relation to criminal processes; and language and interpretation rights, including the rights of minority official language groups to education, and, in some cases, services.

More specifically, s. 2 states: "Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association."



Further, s. 15 states, "(1) Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

S.25 of the Charter states that Charter guarantees of rights and freedoms cannot be used to take away any aboriginal, treaty or other rights or freedoms of the aboriginal peoples of Canada. It states: "The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired."

The Charter applies to Parliament and the government of Canada for all matters related to the Northwest Territories, including a New Western Territory Constitution Act passed by Parliament.

## **ii) New Rights**

The Commission has recommended the reaffirmation of the Canadian Charter of Rights and Freedoms in a New Western Territory constitution. Some people in the second round of hearings told the Commission that Charter rights should not only be reaffirmed, but strengthened and added to. What follows is a summary of conclusions in the main subject areas where people wanted the recognition of new rights.

### **a) Women's Rights**

Women's organizations wanted to entrench constitutional protection for women and children against violence. The Commission members believe that a statement of respect for women in the constitution, perhaps in the preamble to a Social Charter, will help to create a climate of opinion in the New Western Territory in which violence against women and children will not be tolerated.

Women also requested recognition of their right to reproductive freedom. Most Commission members believe that this is a matter more appropriately dealt with at the national level.

Control of the birthing process, including the right of midwives to practice, and of women to use their services, on the other hand, can immediately be provided for in territorial statutes.

---

The Commission recommends that the Northwest Territories government and Legislative Assembly immediately consider creating legislation to ensure the freedom to practise midwifery, and the right to use the services of a midwife.

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The Commission has included provisions for safe, non-violent homes and communities in a proposed Social Charter (see below). However, it may be that more than this can and should be done.

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The Commission recommends that the matter of additional constitutionally entrenched rights for women be revisited in Phase II.

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#### **b) Right to Refuse Medical Treatment**

The members of the Commission feel it is important to take into consideration a major recommendation of the Northwest Territories Seniors Society which dealt with one of the most basic individual rights.

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The Commission recommends that a New Western Territory constitution should establish the right of a competent person of majority age to refuse medical treatment to prolong life, for themselves or their minor children.

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#### **c) Human Rights**

A number of groups and individuals proposed that a Human Rights Code be developed and entrenched. Such codes in the provinces and Yukon provide recourse for the violation of individual human rights through investigations, hearings and judgements, usually by a tribunal set up for the purpose.

There is nothing preventing the Northwest Territories Legislative Assembly from enacting such a code now, rather than waiting for the coming into force of the New Western Territory constitution in 1999.

---

The Commission recommends that the government of the Northwest Territories, in consultation with other leaders, consider the development and enactment of a Human Rights Code prior to the coming into force of the New Western Territory constitution.

---

The code could be viewed as an experiment, whose suitability for inclusion in the constitution will be judged at a later date.

#### **d) Workers' Rights**

The Northwest Territories Federation of Labour proposed a separate and enforceable charter of workers' rights, including: the right to decent working conditions, fair hours and pay, and a safe and healthy workplace; the right to establish and join unions; the right to bargain collectively and to strike; the right to equal pay for work of equal value; and the right of disadvantaged groups to affirmative action.

Commission members agree with the Federation's statement that "we need the jobs, but the people who get the jobs need to be treated fairly," as a statement of principle, and have included it in the preamble to a Social Charter. However, expert legal advice in the field of labour and employment law, including the relation of workers' rights to aboriginal and treaty rights, is needed in order to make more specific recommendations in Phase II.

---

The Commission recommends that the issue of workers' rights be revisited in the next phase of New Western Territory constitutional development.

---

#### **e) Environmental Rights**

The Commission received strong representations for a separate and enforceable charter of environmental rights. There is nothing that brings all people of the New Western Territory together so much as appreciation for the land. The Commission has recommended a strengthened environmental theme for the proposed preamble of a New Western Territory constitution. (See page 11.)

Despite some interesting proposals, however, a complete environmental charter raises legal and jurisdictional issues that will have to be resolved before more concrete recommendations can be made. Such a charter could give people the right to clean air and water. It could create an obligation to take action to maintain

and enhance the links between human health, the economy and local and territorial ecosystems. Commission members are also aware that an Environmental Bill of Rights already exists at the level of territorial statute.

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In the area of environmental rights, the Commission recommends that the issue of a separate and enforceable environmental charter be revisited in Phase II.

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Commission members are conscious that the extensive practical knowledge of indigenous people-- aboriginal and non-aboriginal-- has often been ignored by distant governments in framing laws regulating the land, waters, flora and fauna of the north. Yet no-one has more of an interest in conservation and environmental protection than the people who live in a place and derive sustenance from it.

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The Commission recommends that traditional indigenous knowledge of the environment and western science be recognized as equally valuable, in a charter of environmental rights or other environmental laws.

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#### **f) Social Rights**

Constitutions are not just about government institutions and powers, or the rights of individuals. They are also about measures to ensure the individual and collective well-being of the people who make up the human and social fabric of a territory, province or country. The Constitution of Canada, for example, includes a clause which commits federal and provincial governments to promote equal opportunities, reduce regional economic disparities and providing essential services for all Canadians.

The Commission proposes that the New Western Territory constitution should identify in a Social Charter the basic necessities required for the spiritual, emotional, mental, physical and economic well-being of all members of New Western Territory society.

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The Commission recommends that a Social Charter be introduced with a statement of social principles. These include:

- \* respect for the elders of all peoples, and their traditional knowledge;
  - \* respect for women as equal participants in the social, political and economic mainstream of society;
  - \* respect and care for children;
  - \* recognition of the dignity and importance of the family in the nurturance and support of individuals;
  - \* recognition of the dignity and importance of labour, and the obligation of employers to treat workers fairly; and,
  - \* recognition of the right of all people, but especially women, children and elders, to a life free from violence.
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They also wish to make it clear that they believe individuals, regardless of whether they reside within a family, are entitled to these necessities of life. Individuals are simply members of the larger "family" of New Western Territory citizens.

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The Commission recommends that the Social Charter state that governments have a responsibility to make sure residents have access to:

- \* health and social services;
  - \* education and training opportunities;
  - \* child care;
  - \* adequate shelter;
  - \* a safe work place;
  - \* a safe home and community;
  - \* economic equality;
  - \* affirmative action programs to eliminate systemic barriers to education and employment for disadvantaged groups;
  - \* positive programs to eliminate drug and alcohol abuse, physical and sexual abuse and family violence.
- 

In considering these proposals for a Social Charter, it is important to remember that in some constitutions, such provisions are enforceable by the courts. Commission members originally felt that this should not be the case with the provisions of a Social Charter in the New Western Territory Constitution. Other means could be developed to monitor government's performance in responding to these objectives



and encouraging greater compliance if required. Governments can be encouraged to make fulfilment of basic necessities the first priority for government spending. However, this is a matter that deserves further consideration.

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The Commission recommends that the issue of enforceability of a Social Charter be revisited in Phase II of the New Western Territory constitutional development process.

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The members of the Commission also do not think it is necessary to wait until the coming into force of this constitution, which may be in 1999 or later, to implement some of the measures called for in this charter. In fact, they believe it is urgent that the recommended positive programs, or healing process, for alcohol abuse and violence get under way immediately if families, communities and districts in the New Western Territory are to govern themselves.

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The Commission recommends that the government and Legislative Assembly of the Northwest Territories, in consultation with other leaders, consider funding those communities requesting help for the immediate implementation of a healing process composed of positive programs to combat alcohol and substance abuse, physical and sexual abuse and family violence.

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## **5. First Peoples' Rights**

### **1) Inherent Right of Self-Government**

The First Peoples have an inherent right to self-government. Upon the arrival of the Europeans in Canada, First Peoples entered into nation to nation relationships with the newcomers. That the relationship was seen in this manner by the British Crown as well as the First Peoples is shown in the language of the Royal Proclamation of 1763 and of numbered treaties, including Treaties 8 and 11.

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The Commission recommends that the New Western Territory constitution recognize, uphold and protect the First Peoples' inherent right of self-government.

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First Peoples' languages are now recognized by territorial statute as official languages in the Northwest Territories. The members of the Commission believe that the First Peoples' inherent right to self-government includes the right to use their own languages.

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The Commission recommends that the New Western Territory constitution recognize First Peoples' languages as official languages that will be used in public, central, district and aboriginal government institutions.

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The First Peoples' inherent right to self-government also means that Aboriginal First Nations have the right to opt out of the New Western Territory constitutional process completely and seek a direct link with the federal government.

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The Commission recommends that the New Western Territory constitution recognize that Aboriginal First Nations may opt out of the New Western Territory constitutional process and seek a direct link with the federal government.

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The Commission found in the second round of hearings that the inherent right of aboriginal self-government was well-accepted, though some residents would prefer to see it defined. Some people thought the Commission should wait until national constitutional renewal is complete before making statements in this area.

There are a number of outstanding issues in this area, in part because the definition of aboriginal rights is still in process at the national level. These include the application of the Charter of Rights and Freedoms to aboriginal governments, and the obligation of aboriginal governments to defend and protect the rights of non-aboriginal people.

## **II) Section 35 of the Canadian Constitution**

Section 35 of the Constitution of Canada recognizes and affirms existing aboriginal and treaty rights. This means that Treaties 8 and 11, the Inuvialuit Final Agreement, the Gwich'in Final Agreement and other modern land rights agreements signed in the future will all have protection under the Constitution of Canada. It must be recognized that different First Peoples now have somewhat different rights and aspirations.

A New Western Territory Constitution will have to be consistent with these aboriginal and treaty rights provisions of the Constitution of Canada and should recognize the significance of these agreements to the First Peoples.

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The Commission recommends that any provisions respecting aboriginal and treaty rights in the New Western Territory constitution be consistent with the agreements and treaties now protected by s. 35 of the Canadian Constitution.

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## **III) Rights of Treaty First Nations**

A New Western Territory Constitution should also include commitments to Treaty First Nations. Through Treaties 8 (1899) and 11 (1921), the government of Canada recognized the right of Treaty First Nations to their accustomed hunting, fishing and gathering mode of life, their prior use and occupancy of the land, and their status as sovereign self-determining Treaty First Nations with their own governments (chiefs, headmen and councillors). Treaty First Nations want their treaty and aboriginal rights upheld to restore good feelings and balance with non-aboriginal people.

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The Commission recommends that the spirit, and the meaning and intent of Treaties 8 and 11 be recognized, upheld and protected.

In considering the spirit, meaning and intent of the treaties, the Commission recommends that the constitution state that:

- \* the treaties deal with education, housing, health, economic development and state that taxes would not be imposed;
  - \* the treaties guarantee their adherents rights to hunt, fish and trap, as they always have, on their ancestral lands, without interference;
  - \* the treaties, according to Dene oral history, were not land surrenders, but agreements to share the land, air and water, with the consent of Treaty First Nations;
  - \* the treaties established band councils as Treaty First Nations governments, and these governments are recognized as such;
  - \* Treaty First Nations have the right to establish a justice system and a code of ethics that embodies their traditions, cultures, values, customs, laws and institutions; and,
  - \* Treaty First Nations will determine their own membership, that may include non-Dene.
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#### **iv) Rights of Metis First Nations**

The New Western Territory constitution should also include commitments to Metis First Nations. The government of Canada recognized the aboriginal rights of the Metis in the New Western Territory through the establishment of the Athabasca District Half-breed Commission in 1899 and the Mackenzie River District Half-breed Commission in 1921. These rights were further recognized by the acceptance of the claims of the Metis in the Dene-Metis comprehensive claim negotiation process of the 1973-1991 era.

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The Commission recommends that the aboriginal rights of the Metis First Nations and their citizens be recognized, upheld and protected.

In considering the aboriginal rights of Metis First Nations, the Commission recommends that the following interpretation be stated in the New Western Territory constitution:

- \* citizens of the Metis First Nations will have the same rights to hunt, fish, trap and gather as those of the Treaty First Nations;
  - \* Metis First Nations will have the right to a land base within the New Western Territory and the size of these land bases will be equivalent to the amount of land that was offered under the failed Dene/Metis agreement which means that each Metis First Nation will receive five square miles for each of their citizens;
  - \* each Metis First Nation will have the right to exercise its inherent right of self government on their land base and to provide services to its citizens not living on the land base;
  - \* each Metis First Nation will have the right to set the rules under which citizenship will be granted;
  - \* citizens of the Metis First Nations will be entitled to receive the same program benefits that Indians and Inuit receive from the government of Canada and these program benefits will be administered by the governments of the Metis First Nations.
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#### **iv) Rights of Gwich'in First Nations**

The Gwich'in ratified a modern land agreement with Canada in 1991. This agreement was officially signed April 22, 1992, and will soon be ratified by the Parliament of Canada. The Gwich'in also retain many rights under Treaty 11.

The objectives of the Gwich'in agreement included the recognition and encouragement of the Gwich'in way of life, which is based on the cultural and economic relationship between the Gwich'in and the land; encouragement of their self-sufficiency and enhancement of their ability to participate fully in all aspects of the economy; and the protection and conservation of the wildlife and environment of the settlement area for present and future generations.



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The Commission recommends that the Gwich'in Comprehensive Claim Agreement with Canada, and any future self-government agreements negotiated by Gwich'in First Nations with Canada, be recognized, upheld and protected in the New Western Territory constitution.

In considering the rights of Gwich'in First Nations, the Commission recommends that it be noted that:

- \* the Comprehensive Claim Agreement does not prejudice the rights of Gwich'in as Canadian citizens nor as aboriginal people within the Canadian constitution;
  - \* Gwich'in shall continue to be eligible for all the rights and benefits received by all other citizens and native peoples, and those deriving from the Constitution applicable to native citizens;
  - \* the Agreement recognizes the right of Gwich'in First Nations to negotiate self-government agreements with Canada, which may address, among other matters: the establishment of Gwich'in First Nations Authorities as Gwich'in First Nations governments, establishment of a justice system, and language and culture; and,
  - \* Gwich'in First Nations continue to hold many rights under Treaty 11.
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#### **v) Rights of Inuvialuit First Nations**

The Inuvialuit (western Arctic Inuit) made a separate land claim agreement or modern treaty with the Canadian government in 1984. The Inuvialuit Final Agreement recognized that the three basic goals of the Inuvialuit Land Rights Settlement are: to preserve the culture and values of the Inuvialuit within a changing northern society; to enable them to be equal and meaningful participants in both the northern and national economy and society; and to protect and preserve the Arctic wildlife, environment and biological productivity.

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The Commission recommends that the Inuvialuit Final Agreement and any agreement for self-government the Inuvialuit may reach with Canada will be recognized, upheld and protected in the New Western Territory constitution.

In considering the rights of the Inuvialuit First Nations, the Commission recommends that it be noted that:

- \* the Final Agreement does not prejudice the rights of Inuvialuit as Canadian citizens nor as aboriginal people within the Canadian constitution;
  - \* Inuvialuit shall continue to be eligible for all the rights and benefits received by all other citizens and native peoples (including federal and territorial programs) and those deriving from the Constitution applicable to native citizens; and,
  - \* the agreement also preserved the right of the Inuvialuit to establish self-government institutions.
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#### **vi) Future Rights of Aboriginal First Nations**

It is possible that First Peoples, other than the Gwich'in and Inuvialuit, will reach modern land agreements with Canada in the future, or choose to have their governments recognized by Canada through agreements. The members of the Commission believe the New Western Territory constitution should recognize these legitimate aspirations.

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The Commission recommends that all future agreements between Aboriginal First Nations and Canada on land and resources and self-government be recognized, upheld and protected in the New Western Territory constitution.

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### **6. Orders of Government**

#### **i) Fundamental Principles**

The Commission heard many views on how government should be structured. The Commission also heard differing views on which government should exercise which powers in the New Western Territory. Some stressed the need for a strong central government, while others favoured strong regional and community governments. In their interim report, the Commission proposed the creation of two distinct orders of

government, a district order, and a central order, to meet the need for flexibility in different areas of the New Western Territory.

An inherent right of self-government may be constitutionally entrenched at the national level. The Commission has recommended that the New Western Territory constitution uphold and protect this right. This means that Aboriginal First Nations could exercise the right to establish an exclusive order of government in a New Western Territory. Flexible arrangements will then not be an option, but the only option, if the people of the New Western Territory want to stay together under one government, in one territory.

The Commission has weighed all of these views and is proposing that the following principles form the basis for governments which will be established by the New Western Territory constitution.

While many New Western Territory residents live under and work for a system of government where authority to govern flows down from the federal to the territorial to local levels of government, many believe that the ultimate authority of any government rests with the people.

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The Commission recommends that the New Western Territory constitution affirm that all authority to govern belongs to the people, collectively, and flows, collectively, from them to their institutions of government.

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This principle has been included in the preamble to the constitution. We want to make it clear that the members of the Commission do not regard this as a "motherhood" statement, but as a principle which does have fundamental implications for the form and process of government in a New Western Territory.

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The Commission recommends that the definition and ratification procedure for governing authority flowing from the people be developed in Phase II. This process should make sure the people of the New Western Territory have input into defining the flow of authority and approving what that flow is.

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Following from this recommendation, many New Western Territory residents naturally aspire to have more authority vested in governments which are closer to them, and to have the status of these governments recognized and their powers protected in a New Western Territory constitution.

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The Commission recommends that a New Western Territory constitution recognize different orders of government and the powers of each of those orders.

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An order of government does not exercise powers delegated from a superior level of government. Rather, each order exercises its own powers, which are recognized and enshrined in a constitution, although some, by agreement, may be shared.

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The Commission recommends that authorities not identified in the Constitution as being the exclusive responsibility of the central order of government, be assumed to be vested in other orders of government.

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Thus, the central government does not delegate powers in this concept, but rather the reverse.

## **ii) District Order of Government**

### **a) Rationale**

The debate over municipal versus band governments, and local versus regional government, has been going on in the New Western Territory for the last two decades. Witnesses told the Commission that while modest attempts have been made to transfer more authority to the local or regional levels, the central government in Yellowknife has continued to grow unchecked.

In order to meet aspirations for more Aboriginal First Nations, community and regional government control and decision-making, the Commission recommends that consideration be given to establishing a district order of government in the New Western Territory Constitution.

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The Commission recommends that the New Western Territory constitution establish a district order of government which may be public, exclusively aboriginal or a combination of both.

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**b) Forms of District Government**

The district approach would provide more flexibility in allowing some communities like Yellowknife or Norman Wells to remain municipalities or municipal districts. Others, such as the Inuvialuit communities, may choose to amalgamate into a regional district. A third variation would see Aboriginal First Nations create an exclusive aboriginal district government.

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The Commission recommends that the New Western Territory constitution specify that the people of a district shall have a voice in accepting the form of government for the district, that is whether it shall be a public, exclusively aboriginal, or mixed form of government.

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**c) Geographic Area of Districts**

The members of the Commission were well aware that any mention of boundaries for New Western Territory districts is likely to result in lively discussion. The Commission is willing to put forward principles concerning the geographic description of districts in the hope of encouraging just such discussion. A list of possible districts in a New Western Territory follows this recommendation.



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The Commission recommends that:

- \* the geographic area of district governments may include one or more established communities or municipalities within its boundaries;
  - \* district governments should together encompass the entire geographic region of the New Western Territory;
  - \* a district must be a geographically contiguous area;
  - \* communities within the geographically contiguous area of a district can choose:
    - to opt in to that district
    - to have their own district government recognized instead; or
    - in the case of Aboriginal First Nations, to opt out of the New Western Territory constitutional process completely and seek a direct link with the federal government; and
  - \* the right of Aboriginal First Nations to negotiate with the federal government regarding the geographic area of their lands be recognized, and that it not be prejudiced by participation in New Western Territory district governments.
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#### **List of Possible Districts in the New Western Territory:**

##### Possible Districts Within the Inuvialuit and Gwich'in Settlement Regions

- \* All that part of the Inuvialuit Settlement Region lying within the New Western Territory excepting the lands lying within the municipal boundaries of the Hamlet of Aklavik and the Town of Inuvik;
- \* The Hamlet of Aklavik;
- \* The Town of Inuvik;
- \* The remainder of the Gwich'in Settlement Region lying within the New Western Territory.

##### Possible Districts Within the Sahtu Settlement Region

- \* All that part of the Fort Good Hope/Colville Lake Group Trapping Area lying within the New Western Territory excepting the lands lying within the Gwich'in Settlement Region;
- \* the Town of Norman Wells;
- \* Fort Norman's traditional lands lying within the Sahtu Settlement Region;
- \* Fort Franklin's traditional lands lying within the Sahtu Settlement Region.

Possible Districts Within the Deh Cho Region

- \* The Town of Hay River, the Hay River Corridor and Enterprise;
- \* The Village of Fort Simpson;
- \* The remainder of the Deh Cho Region lying within the New Western Territory.

Possible Districts Within the North Slave Region

- \* The City of Yellowknife and the Ingraham Trail area;
- \* The remainder of the Tli Cho Region lying within the New Western Territory.

Possible Districts Within the South Slave Region

- \* The Town of Fort Smith;
- \* The remainder of the Treaty 8 area, including Ndilo and Dettah and unsundered lands east of the Treaty 8 area within the New Western Territory.

**iii) The Central Order of Government**

There was unanimous agreement at the Commission's hearings on the need for a central government, if only on grounds of practicality and economy. Some speakers believe there is also a need for a central government to act as a force for the greater good of all people in the New Western Territory.

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The Commission recommends that the New Western Territory Constitution establish a central order of government.

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**iv) Distribution of Powers and Responsibilities**

The division of powers among the orders of government is at the heart of the Canadian federal system. A meaningful division of powers between orders of government in a New Western Territory offers the best hope of all residents having a common future, in the view of Commission members.

District governments will be responsible for those matters which most directly affect the daily lives of residents. By "responsible," we do not mean that the district government will simply administer programs on behalf of the central government, unless that is the wish of the district's people. Rather, like provinces and the federal government, districts will have their own spheres of influence. They will make and enforce laws and regulations, as well as administer programs.

Aboriginal governments, and mixed aboriginal-public governments, may have a different list of exclusive powers drawn from their special relationship with the federal government, from treaties or modern land agreements. In effect, aboriginal governments could constitute another order of government within Canada. This matter is under discussion in current constitutional talks.

Similarly, some district governments could, because of their location or other factors, negotiate different types of powers than others. For example, the Inuvialuit are interested in the regulation of renewable and non-renewable resources in the Beaufort Sea offshore, which is currently a federal responsibility.

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The Commission recommends that the principle of asymmetry, or unequal distribution of powers, be recognized as acceptable among district governments.

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Powers for each district government will have to be established before district governments are set up. The members of the Commission have assumed that all the powers of a province will be available to New Western Territory governments, and that special arrangements may also be negotiated between district governments, the central government and Ottawa. Treaty First Nations may wish to exercise exclusive powers that flow from their treaties.

The Commission suggests that the powers available to the district order of government could include, at a minimum:

- \* culture, recreation and language;
- \* pre-school, primary and secondary education;
- \* training and upgrading;
- \* public housing and housing support programs;
- \* delivery of health care and social services, including child welfare;
- \* tribal or municipal infrastructure;
- \* economic development;
- \* regulation and management of socio-economic development agreements;
- \* tribal and municipal administration of justice and delivery of police and corrections services;
- \* renewable resource management, possibly including some areas now within the federal jurisdiction, including migratory birds and marine mammals;
- \* ownership of lands, including surface and subsurface title;
- \* management and administration of lands and waters, the latter now being a federal power;
- \* ownership and administration of district parks;

- \* authority to tax property;
- \* agriculture;
- \* management of wills and estates;
- \* regulation of liquor;
- \* regulation of lotteries;
- \* official languages, in addition to French and English;
- \* solemnization of marriages;
- \* fiscal policy and relations, including direct taxation within the district in order to raise money for district purposes with the exception of income and corporate taxation; and,
- \* such other matters, including the above, where authority may be shared with the central government, or where no provision has been made for the central government to exercise authority.

As noted, some of these powers in Canada today do not belong to the provincial order of government, but to the federal order. In other words, they are not easily transferable through the type of devolution process the government of the Northwest Territories has undertaken with the federal government.

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The Commission recommends that powers, such as inland water management, that now lie with the federal order of government in Canada, but which are desired by district governments in a New Western Territory, be a topic for further study in Phase II.

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The Commission suggests that the central order of government be restricted to the following suggested range of responsibilities:

- \* fiscal policy and relations, including direct taxation within the territory to raise revenue for territorial purposes;
- \* external intergovernmental relations;
- \* standards for and regulation of trade within the territory;
- \* standards for and regulation of transportation infrastructure;
- \* standards for and regulation of utilities;
- \* standards for and regulation of labour relations, labour standards and worker safety;
- \* education standards and post-secondary education facilities;
- \* health standards and territorial health facilities;
- \* standards for and regulation of building, construction and fire safety codes;
- \* regulation of securities and incorporation of companies;
- \* tribal and territorial police services and administration of justice, including territorial courts;
- \* standards for correction services and territorial correction facilities;



- \* standards for and regulation of land use;
- \* environmental protection standards and regulation;
- \* forest fire management and suppression;
- \* standards for wildlife and marine mammal management;
- \* standards for industrial and non-renewable resource development;
- \* standards for and regulation of professions;
- \* regulation of property and civil rights not noted under the powers of district governments
- \* such other matters, including the above, which require territorial wide standards and regulation or that will be managed jointly with other orders of government.

There are a number of outstanding issues regarding the division of powers. One of the most important is whether or not the central government, as well as the district governments, will be able to own land (apart from roads and airstrips), and have authority to tax land and improvements.

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The Commission recommends that, without detracting from the principle of district government ownership of land with surface and subsurface rights, the issue of ownership and jurisdiction over land by the central government be further considered in Phase II.

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The main outstanding issue, for many of the people who made submissions to the Commission on the division of powers, is how much authority the central government will have. Given, for example, very strong aboriginal governments with many exclusive powers, the central government might not have a great deal of authority. It is the view of Treaty First Nations governments that they would be the senior governments.

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The Commission recommends that the appropriate balance of power between central and district governments be addressed in Phase II.

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#### **v) Powers of Taxation**

One question which is related to the degree of authority that each order of government shall have is the power of taxation. While district governments, clearly, should be able to tax land and improvements, as municipalities now do, should they



be able to charge a sales tax? an income tax? a tobacco tax? The Commission has so far suggested leaving most such powers of taxation with the central order.

However, Treaty First Nations represented at national constitutional discussions recently recommended that Treaty First Nations have exclusive jurisdiction over taxation, including tax immunity, of Treaty First Nations lands and people.

A number of people who made submissions to the Commission also stressed the issue of accountability. Should the government that spends the money be the one that is responsible, to the extent possible, for raising the revenue?

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The Commission recommends that the powers of taxation be given special attention in Phase II.

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#### **vi) Territorial-District Fiscal Relations**

All levels of government in the current Northwest Territories are dependent on federal transfer payments, and have limited ability to raise significant revenues in the foreseeable future. Provision will have to be made for the conditions the two new orders of government will face, and for the sharing of financial resources in the future, subject to negotiated agreements.

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The Constitution should contain a provision stating that each order of government will be assured an equitable distribution of financial resources in order that they can properly deliver programs and services for which it is responsible.

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As noted above, if districts are to have real power, they may require more taxation authority. Conversely, there may need to be limits to their powers to borrow, for example. District and central orders of government will have to harmonize fiscal policy and fiscal relations.

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The Commission recommends that fiscal relations be examined in Phase II.

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### **vii) Implementation of District Government**

The Commission acknowledges that once the district orders of government have been created, each will move at a different pace in assuming powers that are available to them. It is possible that one district government will have assumed the full range of authorities available to it, while another may take a more cautious approach.

Therefore, it will be important for the New Western Territory constitution to provide the flexibility that will allow districts to gradually assume increased powers while ensuring that the central order of government has the ability to deliver programs and services until the transition is complete.

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The Commission recommends that:

- \* each district government may assume its powers at its own pace;
  - \* provision be made for the temporary assignment of authority to the central government during the transition to district government; and,
  - \* provision be made for the temporary assignment of authority to the central government at any time.
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Commission members also anticipate that a lot of experimenting will have to be done for the central and district governments to find the most acceptable and efficient division of powers.

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The Commission recommends that in Phase II, provisions to examine, and, if necessary, change the division of powers between the central government and any district at specified intervals (for example, every five years) should be considered.

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## **8. Institutions of Government**

### **i) For District Governments**

The Commission noted that residents may choose whether their governments will be exclusive aboriginal governments, public governments or a mixture of both. Commission members are of the view, however, that whatever form such governments take, they will all have to have certain basic institutions of government.

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The Commission recommends that district governments shall have legislative, executive and, if necessary, judicial branches of government.

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Districts may well wish to exercise some creativity in the form of these institutions. District assemblies or traditional forms of government may be preferred in some districts. Each district government should set out the particular forms these institutions will take, how people are elected or appointed to office in each of them, and for what time period people serve in each office. Representation of groups in district governments is dealt with in section 9 of this chapter.

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The Commission recommends that each district government set out the form of its institutions, the manner of appointment or election and terms of office, in a charter to be attached as a schedule to the New Western Territory constitution.

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### **ii) For the Central Government**

Commission members also believe the central government will have to have all three basic institutions of government. The possibilities are perhaps more limited in this order, both in terms of forms of government and in terms of institutional structures. The central government, for example, is unlikely to be an exclusive aboriginal government. The central government, no matter what its form and institutional structures, will have to reflect a balance among all the cultures of the New Western Territory.

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The Commission recommends that:

- \* the central government of a New Western Territory have legislative, executive and judicial branches; and,
  - \* that models for the structure of these institutions be thoroughly studied and publicly discussed in Phase II.
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In the meantime, the Commission has assumed that a Legislative Assembly of some variety will be among the institutions of a New Western Territory. Provisions for such a body, based on the one now in existence, have been included in the draft constitution in chapter III.

The Commission has not precluded the addition of other institutions, such as a senate or council of elders. Nor is the current method of electing MLAs and selecting the government leader and executive the only one possible. For example, it has been suggested that the government leader be elected in a territory-wide vote. It has also been suggested that the government follow a full consensus system, in which all members of the Legislative Assembly are also members of the executive. These are among the many proposals people may wish to examine in depth in Phase II.

### III) The Judiciary

Questions of who appoints the judiciary, where the seats of justice should be located, and whether each order of government should have a corresponding set of judicial institutions, were not dealt with by the Commission in the interim report. The question of who appoints the judiciary is one that has caused some debate at the national level.

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The Commission recommends that the people of the New Western Territory have input to appointments to courts and other bodies of a judicial nature, without prejudice to the independence of the judiciary.

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A number of Aboriginal First Nations have indicated that they wish to establish their own judicial systems. The Native Women's Association wants to see a set of aboriginal justice councils set up in each First Peoples community to handle family law.

However, certain practical constraints suggested themselves to some Commission members. Are the approximately 15 district governments going to have 15 sets of legal registries and 15 law societies?

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The Commission recommends that further consideration in Phase II be given to establishing a more relevant and effective judicial system in a New Western Territory.

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#### **iv) Chief Executive Officer**

There is a matter of some symbolic importance to be decided, among the institutions detailed in a New Western Territory constitution. Does the territory need a "Commissioner"? What are the requirements for this position?

The Commission was not able to make specific recommendations on who appoints this person, how he or she is selected, or what the name of the position should be. The terms "Commissioner" and "Lieutenant Governor" both have a colonial history, rather than one of ownership by New Western Territory residents. A term such as "Grand Chief" in a First People's language may be more appropriate in the New Western Territory. In the draft bill, this position is referred to as the Chief Executive Officer.

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The Commission recommends that:

- \* the issues of whether the New Western Territory must have a "Commissioner" or "Lieutenant Governor," what the requirements of the position are, how the person is selected, and by whom, be decided upon appropriate advice in Phase II; and,
  - \* that the name for a New Western Territory Chief Executive Officer be taken from a First People's language.
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#### **v) Ombudsperson**

A simple mechanism for monitoring the Social Charter could be a commission or an ombudsperson. The GNWT is now considering creating the latter office along with access to government information legislation. A commission or ombudsperson could also monitor and report to the central legislature on regional disparities. An



ombudsperson, in the view of Commission members, would be a very useful addition to the institutions of government in the central order.

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The Commission recommends that the government of the Northwest Territories proceed with the creation of an office of ombudsperson, and that this office continue in a New Western Territory.

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## **9. The Right to Vote and Stand for Office**

### **I) The Charter Provisions**

The Canadian Charter of Rights and Freedoms provides in s.3 that: "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein." It is not known to what extent the desire of some districts to re-establish forms of government which are based on consensus and traditional forms of leadership will be exercised under the Charter s.25, or as an inherent right.

Bearing these facts in mind, the Commission nevertheless recommends that the option for traditional forms of representation remain open at least at the district order.

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The Commission recommends that representation in the law-making branches of district governments should be in accordance with the wishes of the residents living within their boundaries.

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### **II) Guaranteed Representation In the Central Order**

The Commission presented specific recommendations regarding guaranteed representation in the central order of a New Western Territory government in its interim report.

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The Commission recommends that:

- \* the Legislative Assembly of the central government be representative of the residents of the New Western Territory;
  - \* the Legislative Assembly be structured to ensure that First Peoples' representatives and non-aboriginal residents are present as members; and,
  - \* the Legislative Assembly of the central government be representative of men and women.
- 

These proposed principles did not go far enough for some, and were repugnant to others. Much depends on the degree of power that remains with the central government. If a great deal of power remains at that order, some groups will want to see guaranteed representation. If most real power remains with the districts, guaranteed representation, except perhaps, of districts themselves, may not be seen as very necessary.

The term "guaranteed representation" covers two different types of representation. It is possible, for example, for a Legislative Assembly to contain women or First Peoples in the approximate proportion that exists in the general population. However, unless MLAs are specifically appointed or elected to represent female or a First People's interests, these groups may say, perhaps rightly, that they are not "represented."

One scheme considered by the Commission involved having both a man and a woman elected by all the voters in each riding. First Peoples' representation would be guaranteed in the same manner as it is now, by disproportionately representing rural ridings. Such a scheme could be made more attractive by the addition of extra seats for First Peoples if the numbers elected fall below a critical threshold.

Recall provisions, in which constituents can force an election under certain circumstances, would make legislators more accountable to their constituents.

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The Commission recommends that a variety of models to fulfill the goals of guaranteed representation of women and men, and First Peoples and non-aboriginal residents, be further examined in Phase II.

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### III) Proportional Representation in the Central Order

Another option for reconciling the one person, one vote tradition with group representation would be a system of proportional representation, with "parties" organized to represent the different groups. For example, there could be a "Metis party," a "women's party" and so on.

The system might work like this:

Each party would provide a list of candidates, starting with the candidate they most want to see in the House, and going on to the next more preferred candidate and so on. But voters would vote for a party, rather than a particular candidate. The parties would receive seats in roughly the same proportion as their popular vote. Thus, if the "Metis party" picked up 25% of the popular vote, that party would receive 25% of the seats in the Legislative Assembly. They would fill the seats in the order of the list they provided, until they reached their 25%.

This is a common system, used in many world governments. However, it was the view of the Commission that representation is a matter which will require a great deal more public discussion and research. It will be dependent on conclusions reached about structures of government in Phase II.

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The Commission recommends that the option of proportional representation in the central order be explored in Phase II.

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### 10. Amending the New Western Territory Constitution

The procedure for making changes to a constitution is a vital part of constitutional development. As an example of the importance of this topic, it is only necessary to recall the years of protracted debate over an amending formula for the Canadian Constitution. Most of the discussion hinged on a veto for Quebec over any constitutional change affecting matters of special interest to that province.

The current "constitution" of the Northwest Territories, The Northwest Territories Act, is a federal statute. This means that the Parliament of Canada is legally able to change the way residents of the Northwest Territories are governed without their consent, provided the change does not affect Aboriginal First Nations' rights under s.35 of the Canadian Constitution.

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The Commission recommends that amending the New Western Territory Constitution be under the exclusive authority of the people of the territory and subject to amending procedures established in their Constitution.

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A second important element to consider is how an amendment can be initiated and who can start the process of change. In the provinces, the government and legislature usually start the process; however, public hearings and debate may precede any decision to proceed with an amendment. Section 45 of the Canadian Constitution says that provincial legislatures may exclusively make laws for amending the constitution of the province. This section may not apply to the constitution of the New Western Territory. Therefore, there is some latitude in designing an amending formula for the constitution of the New Western Territory.

Who can initiate amendments, identification of amendments that require the consent of certain bodies, and the level of public involvement are all topics that must be addressed in a New Western Territory constitution.

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The Commission recommends that:

- \* the New Western Territory constitution contain provisions which allow First Nations, the central legislature and District governments to initiate the constitutional amendment process;
  - \* the New Western Territory constitution identify those amendments which will require the consent of Aboriginal First Nations, district governments and the central legislature before an amendment can be approved and enshrined in the constitution;
  - \* the New Western Territory constitution should guarantee a public information and consultation process on all amendments, including a definition of those amendments which will require public support through a referendum or plebiscite before ratification by the central legislature.
- 

The central Legislative Assembly may have exclusive authority in this area, with a series of checks and balances built in. These checks and balances would involve the public, the district governments, First Peoples and the central government.

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The Commission recommends that the New Western Territory central legislature should be the final authority for passing laws which amend the New Western Territory constitution, subject to the veto powers of Aboriginal First Nations, district governments and the central government.

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Treaty First Nations made it very clear at the Commission's hearings that they believe they must consent to any New Western Territory constitutional amendment. Their process is likely to be as follows, according to Treaty First Nations representatives:

The Treaty First Nations assemble to agree on a process, that is, to decide on assembly ratification versus band by band ratification. Single bands may have an absolute veto, or their lack of consent may mean only that negotiators go back to the table. All amendments require Treaty First Nations consent.

### **III DRAFT CONSTITUTION FOR A NEW WESTERN TERRITORY**

The draft bill presented in the next few pages is not a law, or even a legislative proposal. The "draft bill" is meant to get people thinking about the fact that the New Western Territory constitution will be a law. Such a law will probably be similar in form if not in exact content, to the example given here.

The Commission has made a large number of recommendations regarding further work in Phase II on outstanding constitutional issues. Readers will note that this specimen constitution does not include all the matters that may be of concern to them. They should not be alarmed. The reason for this is that Phase II work will have to be taken into account when serious constitutional drafting begins. Legal drafting is a complex and time-consuming process.



BILL

AN ACT TO ESTABLISH AND PROVIDE FOR THE GOVERNMENT  
OF THE NEW WESTERN TERRITORY

Whereas the New Western Territory is home to many peoples among whom are the Inuvialuit, the Gwich'in, the Hare, the Slavey, the Tli Cho, the Chipewyan, the Cree and the Metis, the First Peoples of the New Western Territory, who have lived and continue to live in harmony with the land and in accordance with their laws and customs in societies that had sovereign relationships with each other and are recognized as founding peoples of the New Western Territory;

And whereas many other groups and individuals whose ancestors are from all parts of the world and who have chosen to make the New Western Territory their home and are recognized as an integral part of the society of the New Western Territory;

And whereas all the previously mentioned peoples share the following common values:

- (a) recognition of the land itself as the source of spiritual, emotional, mental and physical well-being,
- (b) a commitment to live in balance with the land,
- (c) a desire to restore good feelings, balance and harmony among all New Western Territory peoples,
- (d) a belief that all authority to govern belongs to the people and flows from them to their institutions of government,
- (e) a respect for our distinct cultures, traditions and languages, and
- (f) a desire to create a balance between the rights of the individual and the collective rights of peoples;

And the people of the New Western Territory recognize and affirm the supremacy of the principles enshrined in the *Canadian Charter of Rights and Freedoms*;

And it is expedient to provide for the government of the New Western Territory;

And the consent of the Aboriginal First Nations has been given to the enactment of this Act;

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enact as follows:

Interpretation

Definitions

1. In this Act,

|                                                |                                                                                                                                          |
|------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| "Aboriginal First Nations"                     | "Aboriginal First Nations" means Treaty First Nations, Metis First Nations, Gwich'in First Nations and Inuvialuit First Nations;         |
| "Chief Executive Officer"                      | "Chief Executive Officer" means the Chief Executive Officer of the New Western Territory;                                                |
| "Chief Executive Officer in Executive Council" | "Chief Executive Officer in Executive Council" means the Chief Executive Officer acting by and with the advice of the Executive Council; |
| "Court"                                        | "Court" means the Supreme Court of the New Western Territory;                                                                            |
| "First Peoples"                                | "First Peoples" means the Inuvialuit, the Gwich'in, the Hare, the Slavey, the Tli Cho, the Chipewyan, the Cree and the Metis;            |

|                            |                                                                                                                                                                                                                                                                     |    |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| "Gwich'in First Nations"   | "Gwich'in First Nations" means Gwich'in First Nation Authorities as defined in Appendix "B" to the Gwich'in Comprehensive Land Claim Agreement referred to in paragraph 3(1)(d);                                                                                    |    |
| "Inuvialuit First Nations" | "Inuvialuit First Nations" means Inuvialuit community corporations established pursuant to chapter 6 of the Inuvialuit Final Agreement referred to in paragraph 3(1)(c);                                                                                            | 5  |
| "Metis First Nations"      | "Metis First Nations" means the Metis Nation-Northwest Territories affiliated locals, except those in Fort McPherson, Arctic Red River, Aklavik and Inuvik;                                                                                                         |    |
| "Territory"                | "Territory" means the New Western Territory which comprises all that part of Canada north of the 60th parallel of north latitude, except the portions thereof that are within Nunavut, the Yukon Territory, the Province of Quebec or the Province of Newfoundland; | 10 |
| "Treaty First Nations"     | "Treaty First Nations" means the Indian band governments located in the New Western Territory except those in Fort McPherson, Arctic Red River, Aklavik and Inuvik.                                                                                                 | 15 |

# PART I

## CLAIMS AGREEMENTS, TREATIES, AND RIGHTS

### Interpretation

|                                                 |                                                                                                                                                                                                                                                                                                      |    |
|-------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Interpretation not to affect certain rights     | 2. For greater certainty, it is hereby declared that nothing in this Act shall be interpreted as affecting                                                                                                                                                                                           |    |
|                                                 | (a) the inherent right of the First Peoples to self-government;                                                                                                                                                                                                                                      | 25 |
|                                                 | (b) the existing aboriginal rights and treaty rights of the First Peoples;                                                                                                                                                                                                                           |    |
|                                                 | (c) the agreement between the Committee for Original Peoples' Entitlement, representing the Inuvialuit of the Inuvialuit Settlement Region and the Government of Canada, dated June 5, 1984 and tabled in the House of Commons of Canada on June 19, 1984, and recorded as document number 322-7/20; | 30 |
|                                                 | (d) the comprehensive claim agreement dated April 22, 1992, between Her Majesty the Queen in Right of Canada and The Gwich'in as represented by The Gwich'in Tribal Council; and                                                                                                                     |    |
|                                                 | (e) any other agreement of a like nature to the agreements referred to in paragraphs (c) and (d) when approved, given effect to and declared valid by the Parliament of Canada.                                                                                                                      | 35 |
| Treaties 8 and 11                               | 3. (1) For greater certainty, it is hereby declared that, in interpreting this Act, the spirit, meaning and intent of Treaties 8 and 11 shall be recognized, upheld and protected.                                                                                                                   |    |
| Spirit, meaning and intent of Treaties 8 and 11 | (2) In considering the spirit, meaning and intent of Treaties 8 and 11, this Act recognizes that                                                                                                                                                                                                     | 40 |
|                                                 | (a) the Treaties deal with economic development, education, housing and health;                                                                                                                                                                                                                      |    |
|                                                 | (b) taxes shall not be imposed on the adherents to the Treaties;                                                                                                                                                                                                                                     |    |
|                                                 | (c) the Treaties guarantee Treaty Dene rights to hunt, fish and trap, as they always have, on their ancestral lands;                                                                                                                                                                                 | 45 |
|                                                 | (d) the Treaties, according to Dene oral history, were not land surrenders but agreements to share the land, air and water with the consent of First Nations;                                                                                                                                        |    |
|                                                 | (e) the Treaties established band councils as First Nations governments and these governments are recognized as such;                                                                                                                                                                                |    |
|                                                 | (f) Treaty First Nations have the right to establish a justice system and a code of ethics that embodies their traditions, cultures, values, customs, laws and institutions; and                                                                                                                     | 50 |
|                                                 | (g) Treaty First Nations may determine their membership that may include persons who are not Dene.                                                                                                                                                                                                   |    |

*Metis Rights*

Metis rights

4. The following aboriginal rights of the Metis First Nations and their citizens are recognized and shall be upheld and protected:

- (a) citizens of the Metis First Nations have the same rights to hunt, fish, trap and gather as those of the members of the Treaty First Nations;
- (b) Metis First Nations have the right to a land base within the New Western Territory and the size of those land bases shall be equivalent to the amount of land offered under the proposed Dene/Metis agreement, that is, each Metis First Nation will receive five square miles for each of their citizens;
- (c) each Metis First Nation has the right to exercise its inherent right of self government on their land base and to provide services to its citizens not living on the base;
- (d) each Metis First Nation has the right to set the rules under which Metis citizenship will be granted; and
- (e) citizens of the Metis First Nations are entitled to receive the same program benefits that Indians and Inuit receive from the Government of Canada and those program benefits shall be administered by the governments of the Metis First Nations.

*Traditions*

Declaration re traditions

5. The traditions, cultures, values, customs, laws and institutions of the First Peoples are hereby recognized and the right to practise those customs and enforce those laws is recognized and affirmed.

*Medical Treatment*

Right to refuse

6. (1) Competent persons who have attained the age of majority have the right to refuse any medical treatment for themselves and their children who have not attained the age of majority

Where right may not be exercised

(2) A person may not refuse treatment for themselves or their children who have not attained the age of majority where the refusal constitutes a danger to public health.

PART II

DISTRICT GOVERNMENT

Establishment of district government

7. (1) An order of government known as district government is hereby established for each of the districts established by subsection (2).

Establishment of districts

(2) Each of the following districts, with boundaries as set out in the Schedule, are hereby established:

- (a) within the Inuvialuit and Gwich'in Settlement Regions
  - (i) all that part of the Inuvialuit Settlement Region lying within the New Western Territory excepting the lands lying within the municipal boundaries of the Hamlet of Aklavik and the Town of Inuvik,
  - (ii) the Hamlet of Aklavik,
  - (iii) the Town of Inuvik,
  - (iv) the remainder of the Gwich'in Settlement Region lying within the New Western Territory;
- (b) within the Sahtu Settlement Region
  - (i) all that part of the Fort Good Hope/Colville Lake Group Trapping Area lying within the New Western Territory except those lands lying within the Gwich'in Settlement Region,
  - (ii) the Town of Norman Wells,

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |    |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
|                      | (iii) Fort Norman's traditional lands lying within the Sahtu Settlement Region,                                                                                                                                                                                                                                                                                                                                                                                                            |    |
|                      | (iv) Fort Franklin's traditional lands lying within the Sahtu Settlement Region;                                                                                                                                                                                                                                                                                                                                                                                                           |    |
|                      | (c) within the Deh Cho Region                                                                                                                                                                                                                                                                                                                                                                                                                                                              |    |
|                      | (i) the Town of Hay River, the Hay River Corridor and Enterprise,                                                                                                                                                                                                                                                                                                                                                                                                                          | 5  |
|                      | (ii) the Village of Fort Simpson,                                                                                                                                                                                                                                                                                                                                                                                                                                                          |    |
|                      | (iii) the remainder of the Deh Cho Region lying within the New Western Territory;                                                                                                                                                                                                                                                                                                                                                                                                          |    |
|                      | (d) within the North Slave Region                                                                                                                                                                                                                                                                                                                                                                                                                                                          |    |
|                      | (i) the City of Yellowknife and the Ingraham Trail area,                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |
|                      | (ii) the remainder of the Tli Cho Region lying within the New Western Territory;                                                                                                                                                                                                                                                                                                                                                                                                           | 10 |
|                      | (e) within the South Slave Region                                                                                                                                                                                                                                                                                                                                                                                                                                                          |    |
|                      | (i) the Town of Fort Smith,                                                                                                                                                                                                                                                                                                                                                                                                                                                                |    |
|                      | (ii) the remainder of the Treaty 8 area including Ndilo and Dettah and unsundered lands East of the Treaty 8 area lying within the New Western Territory.                                                                                                                                                                                                                                                                                                                                  |    |
| Form of government   | (3) The form of government for each district shall be the form set out in respect of that district in the Schedule.                                                                                                                                                                                                                                                                                                                                                                        | 15 |
| Legislative powers   | (4) In each district, the legislative branch may make laws in relation to matters coming within the following classes of subjects:                                                                                                                                                                                                                                                                                                                                                         |    |
|                      | (a) culture, recreation and language;                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 20 |
|                      | (b) pre-school, primary and secondary education;                                                                                                                                                                                                                                                                                                                                                                                                                                           |    |
|                      | (c) training and upgrading;                                                                                                                                                                                                                                                                                                                                                                                                                                                                |    |
|                      | (d) public housing and housing support programs;                                                                                                                                                                                                                                                                                                                                                                                                                                           |    |
|                      | (e) delivery of health care and social services, including child welfare;                                                                                                                                                                                                                                                                                                                                                                                                                  |    |
|                      | (f) tribal or municipal infrastructure;                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 25 |
|                      | (g) economic development;                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |    |
|                      | (h) regulation and management of socio-economic development agreements;                                                                                                                                                                                                                                                                                                                                                                                                                    |    |
|                      | (i) tribal and municipal administration of justice and delivery of police and corrections services;                                                                                                                                                                                                                                                                                                                                                                                        |    |
|                      | (j) renewable resource management including migratory birds and marine mammals;                                                                                                                                                                                                                                                                                                                                                                                                            | 30 |
|                      | (k) ownership of lands, including surface and subsurface title;                                                                                                                                                                                                                                                                                                                                                                                                                            |    |
|                      | (l) management and administration of lands and waters;                                                                                                                                                                                                                                                                                                                                                                                                                                     |    |
|                      | (m) ownership and administration of district parks;                                                                                                                                                                                                                                                                                                                                                                                                                                        |    |
|                      | (n) taxation of property;                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |    |
|                      | (o) agriculture;                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 35 |
|                      | (p) management of wills and estates;                                                                                                                                                                                                                                                                                                                                                                                                                                                       |    |
|                      | (q) intoxicants;                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |    |
|                      | (r) lotteries;                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |    |
|                      | (s) official languages, in addition to the English and French languages;                                                                                                                                                                                                                                                                                                                                                                                                                   |    |
|                      | (t) fiscal policy and relations, including direct taxation, other than personal and corporate income tax, within the district in order to raise money for district purposes; and                                                                                                                                                                                                                                                                                                           | 40 |
|                      | (u) solemnization of marriage.                                                                                                                                                                                                                                                                                                                                                                                                                                                             |    |
| Limitation           | (5) No law may be made pursuant to paragraph (4)(s) that reduces rights in respect of the English and French languages or reduces services provided in English and French as those rights or services existed on the day this Act comes into force.                                                                                                                                                                                                                                        | 45 |
| Additional authority | (6) In each district, the authority of the legislative branch of district government extends to those classes of subjects that are assigned exclusively to the Legislatures of the Provinces and that are not expressly enumerated as a class within the classes of subjects over which the Legislature of the Territory has exclusive authority and to such other classes of subjects as may be transferred to the legislative branch of district government by the Parliament of Canada. | 50 |
| Transfer of powers   | (7) After the establishment of a district government, it may request the Chief Executive Officer in Executive Council to accept a grant of the right to exercise any of the powers set out in subsection (4) to the Government of the New Western Territory or to the Legislature.                                                                                                                                                                                                         | 55 |

- |                  |                                                                                                                                                                                                                                                                             |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Grant of request | (8) Where the Chief Executive Officer in Executive Council receives a request referred to in subsection (7), the Chief Executive Officer in Executive Council shall, by order, grant the request.                                                                           |
| Deemed amendment | (9) Where a request is granted under subsection (8), the legislative branch of that district government may no longer make laws under that power in relation to that district until such time as the district government revokes the request referred to in subsection (7). |
| Agreements       | 8. A district government may enter into agreements with the Government of Canada, the Government of the New Western Territory and another district government for the purpose of better carrying out any of its duties and functions.                                       |

*Seat of Government*

- |                    |                                                                                                                                        |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| Seat of government | 9. The seat of government for a district government shall be at such place as is determined by the legislative branch of the district. |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------|

*Amalgamation*

- |                                    |                                                                                                                                                                                                                                            |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Amalgamation                       | 10. (1) Two or more contiguous districts may amalgamate and continue as one district where a majority of the residents in each district proposing to amalgamate approves, in a referendum, the amalgamation.                               |
| Form of government on amalgamation | (2) Where an amalgamation is proposed and a referendum is to be held, the residents of the districts that may amalgamate shall also be asked to determine the form of government for the district that is to result from the amalgamation. |

PART III

DIVISION A

CENTRAL GOVERNMENT

*Chief Executive Officer*

- |                         |                                                                                                                                                                                                                                                |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Appointment             | 11. The Governor in Council may appoint for the Territory a Chief Executive Officer.                                                                                                                                                           |
| Administrator           | 12. (1) The Governor in Council may appoint an Administrator of the Territory.                                                                                                                                                                 |
| Powers of Administrator | (2) If the Chief Executive Officer is absent, ill or unable to act or the office of the Chief Executive Officer is vacant, the Administrator has and may exercise all the powers and perform all the functions of the Chief Executive Officer. |

*Seat of Government*

- |          |                                                                                  |
|----------|----------------------------------------------------------------------------------|
| Location | 13. The seat of government of the Territory shall be at the City of Yellowknife. |
|----------|----------------------------------------------------------------------------------|

*Executive Council*

- |                   |                                                                                                                                                       |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Executive Council | 14. The Executive Council of the Territory shall be composed of such persons, and under such designations, as the Chief Executive Officer thinks fit. |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|

*Legislature*

- |                         |                                                                                                                                                         |
|-------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| Legislature established | 15. There shall be a Legislature for the Territory consisting of the Chief Executive Officer and the Legislative Assembly of the New Western Territory. |
|-------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|



# DRAFT BILL FOR DISCUSSION

|                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                |
|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| First members of Legislative Assembly     | 16. (1) The Legislative Assembly shall be first composed of those members of the Legislative Assembly of the Northwest Territories who represent ridings that are situate within the New Western Territory on the day on which this Act comes into force.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                |
| Tenure of first members                   | (2) The first members of the Legislative Assembly continue in office until the first election of members to represent the electoral divisions into which the Territory may be divided by Act of the Legislature or for one year from the day on which this Act comes into force, whichever is the earlier.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 5              |
| Duration of Assembly                      | (3) Subject to subsection (2), every Legislative Assembly shall continue for four years from the date of the return of the writs for the general election and no longer, but the Chief Executive Officer may, at any time, after consultation with each of the members of the Legislative Assembly with whom consultation can then be effected, dissolve the Legislative Assembly and cause a new Legislative Assembly to be elected.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 10             |
| Writs                                     | (4) Writs for the election of members of the Legislative Assembly shall be issued on the instructions of the Chief Executive Officer.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 15             |
| Sessions of Assembly                      | (5) The Chief Executive Officer shall convene at least one session of the Legislative Assembly in every calendar year so that 12 months shall not intervene between the last sitting of the Legislative Assembly in one session and the first sitting of its next session.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 20             |
| Oaths of office                           | 17. Each member of the Legislative Assembly shall, before assuming the duties of his or her office, take and subscribe before the Chief Executive Officer such oaths of office and allegiance as the Chief Executive Officer may prescribe.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 25             |
| Speaker                                   | 18. (1) The Legislative Assembly shall elect one of its members to be Speaker.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                |
| Speaker to preside                        | (2) The Speaker shall preside over the Legislative Assembly when it is in session.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 30             |
| Quorum                                    | 19. A majority of the Legislative Assembly, including the Speaker, constitutes a quorum.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                |
| Qualifications of electors and candidates | 20. The Legislature may establish <ul style="list-style-type: none"> <li>(a) the qualifications of persons as electors and the qualifications of electors to vote at an election of members of the Legislative Assembly;</li> <li>(b) the qualifications of persons as candidates for election as members of the Legislative Assembly; and</li> <li>(c) the reasons for which a member of the Legislative Assembly may be or become disqualified from being or sitting as a member of the Legislative Assembly.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 35<br>40       |
|                                           | <i>Legislative Powers</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                |
| Legislative powers                        | 21. (1) Subject to the other provisions of this Act, the Legislature may make laws in relation to matters coming within the following classes of subjects: <ul style="list-style-type: none"> <li>(a) fiscal policy and relations, including direct taxation within the Territory in order to raise revenue for territorial purposes;</li> <li>(b) the establishment and tenure of territorial offices and the appointment and payment of territorial officers;</li> <li>(c) election of members of the Legislative Assembly and controverted elections;</li> <li>(d) annual indemnities of members of the Legislative Assembly and travel and living expenses for each session of the Assembly and for meetings of Committees thereof;</li> <li>(e) international, federal, provincial, territorial and First Nations relations;</li> <li>(f) standards for and regulation of transportation infrastructure;</li> <li>(g) standards for and regulation of utilities;</li> <li>(h) labour standards and regulation of labour standards and worker safety;</li> </ul> | 45<br>50<br>55 |

- (i) education standards and post-secondary education facilities;
- (j) health standards and territorial health facilities;
- (k) standards for and regulation of building, construction and fire safety codes;
- (l) regulation of securities and incorporation of companies and societies with territorial objects;
- (m) tribal and territorial police services and administration of justice including the constitution, maintenance and organization of Territorial Courts, both of civil and criminal jurisdiction and including procedure in civil matters in those courts;
- (n) the imposition of fines, penalties, imprisonment or other punishments in respect of the contravention of the provisions of any Act;
- (o) standards for correction services and territorial correction facilities;
- (p) standards for and regulation of land use;
- (q) environmental protection standards and regulations;
- (r) forest management and suppression of forest fires;
- (s) standards for wildlife and marine mammal management;
- (t) standards for industrial and non-renewable resource development;
- (u) standards for and regulation of professions;
- (v) standards for and regulation of trade within the Territory;
- (w) property and civil rights to the extent that they are not included within the powers of district government; and
- (x) such other matters as require standards and regulation for the entire Territory or that may be managed jointly with another government.

Review of  
appointments

(2) The Legislative Assembly may review, before an appointment is effective, any appointment to any territorial court and to any administrative or quasi-judicial body established by an Act of the Legislature.

Agreements  
with Govern-  
ment of  
Canada

22. The Legislature may authorize the Chief Executive Officer to enter into an agreement with the Government of Canada under and for the purposes of any Act of Parliament that authorizes the Government of Canada to enter into agreements with the provinces.

Borrowing and  
lending

23. The Legislature may authorize

- (a) the borrowing of money on behalf of the Territory for territorial, district, municipal or local purposes;
- (b) the lending of money by the Government of the New Western Territory to any person in the Territory; and
- (c) the investing by the Government of the New Western Territory of surplus money.

#### *Laws Applicable to the Territory*

Laws of  
Northwest  
Territories

24. Subject to this Act, the laws in force in the Northwest Territories on the day this Act comes into force are in force in the Territory, in so far as they are applicable in the Territory until they are repealed, altered, varied or modified by any Act of the Legislature or of the legislative branch of a district government established under Part II.

Offices  
continued

25. All courts of civil and criminal jurisdiction and all commissions, powers, authorities and functions, and all officers and functionaries, judicial, administrative and ministerial existing immediately before the coming into force of this Act in the Territory continue as if this Act had not been enacted until repealed, abolished, altered or terminated by Parliament or by or under an Act of the Legislature.

Recommendation  
of Chief  
Executive  
Officer

26. It is not lawful for the Legislative Assembly to adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue of the Territory, or of any tax or impost, to any purpose that has not been first recommended to the Legislative Assembly by message of the Chief Executive Officer, in the session in which the vote, resolution, address or bill is proposed.

*Revenues*Distribution of  
revenues

27. The Government of the New Western Territory shall ensure that revenues received from the Government of Canada and from direct taxation within the Territory are distributed equitably between the government of the Territory and district governments in order that each order of government may deliver the programs and services for which it is responsible.

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## DIVISION B

## ADMINISTRATION OF JUSTICE

10

*Judicature*Appointment  
of judges

28. The Governor in Council shall appoint the judges of such superior and district courts as are now or may hereafter be constituted in the Territory.

15

Tenure of  
office of  
judges

29. The judges of the superior and district courts in the Territory shall hold office during good behaviour but are removable by the Governor in Council on address of the Senate and House of Commons and shall cease to hold office on attaining the age of seventy-five years.

20

*Supreme Court*

Deputy judges

30. (1) The Governor in Council may appoint any person who is or has been a judge of a superior or district court of any of the provinces or a barrister or advocate of at least ten years standing at the bar of any province to be a deputy judge of the Court and fix his or her remuneration and allowances.

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Duration of  
appointment

(2) A deputy judge may be appointed pursuant to subsection (1) for any particular case or cases or for any specified period.

30

Tenure of  
office

(3) A deputy judge holds office during good behaviour, but is removable by the Governor General on address of the Senate and House of Commons.

Residence

31. The senior judge of the Court shall reside in the city of Yellowknife or within forty kilometres thereof.

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Exercise of  
powers of  
stipendiary  
magistrate

32. Where in any Act of Parliament or other law in force in the Territory it is expressed that a power or authority is to be exercised or a thing is to be done by a stipendiary magistrate of the Territory, the power or authority shall be exercised or the thing shall be done by a judge of the Court or, where the power, authority or thing is within the jurisdiction given to him or her pursuant to this Act, by a police magistrate.

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## PART IV

## SOCIAL CHARTER

45

*Principles*

Social Charter

33. The Social Charter set out in section 34 is founded on the following principles:

- (a) respect for the elders of all our peoples, and their traditional knowledge;
- (b) respect for women as equal participants in the social, political and economic mainstream of society;
- (c) respect and care for children;
- (d) recognition of the dignity and importance of the family and its role in the nurturing and support of individuals;
- (e) recognition of the dignity and importance of labour, and the obligation of employers to

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- treat workers fairly; and  
(f) recognition of the right of all people to a life free from violence.

*Responsibilities of Governments*

- |                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Responsibilities<br>of governments | <p>34. It is the responsibility of governments to make certain that residents of the New Western Territory have access to</p> <ul style="list-style-type: none"> <li>(a) health and social services;</li> <li>(b) education and training opportunities;</li> <li>(c) child care;</li> <li>(d) adequate shelter;</li> <li>(e) a safe work place;</li> <li>(f) a safe home and community;</li> <li>(g) economic equality;</li> <li>(h) affirmative action programs to eliminate systemic barriers to education and employment for disadvantaged groups; and</li> <li>(i) programs to eliminate drug and alcohol abuse, physical and sexual abuse and family violence.</li> </ul> |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

*Enforcement*

- |                           |                                                                                                        |
|---------------------------|--------------------------------------------------------------------------------------------------------|
| Rights not<br>enforceable | <p>35. The responsibilities of governments set out in section 34 may not be enforced by any court.</p> |
|---------------------------|--------------------------------------------------------------------------------------------------------|

PART V

AMENDMENT

- |                                                    |                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Constitutional<br>amendment                        | <p>36. The Legislature of the New Western Territory may exclusively make laws amending the Constitution of the New Western Territory.</p>                                                                                                                                                                                                                   |
| Amendment<br>respecting<br>district<br>governments | <p>37. An amendment to the Constitution of the New Western Territory in relation to district governments may only be made where so authorized by resolutions of at least two-thirds of the district governments representing at least fifty per cent of the population of the Territory and by resolution of the Legislative Assembly of the Territory.</p> |
| Consent of<br>First Nations                        | <p>38. An amendment referred to in sections 36 and 37 is of no effect until the Aboriginal First Nations have consented to the amendment.</p>                                                                                                                                                                                                               |

PART VI

CITATION

- |                          |                                                                                                                                                                                                |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Constitution<br>Act 1992 | <p>39. This Act may be cited as the <i>Constitution Act, 1992</i> and the Constitution Acts 1867 to 1982 and this Act may be cited together as the <i>Constitution Acts, 1867 to 1992</i>.</p> |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

SCHEDULE

| District | Legal Description<br>(to be completed when determined) | Form of Government |
|----------|--------------------------------------------------------|--------------------|
|----------|--------------------------------------------------------|--------------------|

#### IV DEVELOPING, APPROVING AND ENTRENCHING THE NEW CONSTITUTION

##### 1. The Next Stage

Other sections of this report have reviewed the way in which the Commission completed Phase I of its mandate. The Commission has made a large number of proposals for further work in a second phase. While decisions have yet to be made on an approach to completing and approving the New Western Territory constitution, presentations to the Commission made it clear that residents, organizations and other levels of government in the New Western Territory expect to participate in the process.

A variety of suggestions were made to the Commission involving further consultation, funding ongoing participation by organizations and governments and convening a constituent assembly to write the constitution.

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The Commission recommends that:

- \* the Committee of Political Leaders ensure that New Western Territory constitutional development issues will be addressed at upcoming assemblies of the Aboriginal First Nations and the Legislative Assembly;
- \* the Committee of Political Leaders seek the agreement of their parent bodies to hold a representative assembly of constitutional stakeholders in the fall of 1992;
- \* this representative assembly be composed of two representatives from each Aboriginal First Nation (bands, Metis locals and Inuvialuit community corporations), the mayor and one councillor from each tax-based municipality, western MLAs, the public interest organizations recognized and funded to date in this process, Northwest Territories Members of Parliament and observers from the federal government;
- \* the objectives of the representative assembly should be:
  - to review this report
  - to recommend to the Committee of Political Leaders how the process of New Western Territory constitutional development, including a duly mandated constituent assembly, should best continue, and
  - to reach consensus on certain issues.

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As an alternative, a process for finalizing a new constitution could be set out in enabling legislation. The legislation would identify the parties who have the right to



participate, provide a statement of purpose and set out the negotiating process for a constituent assembly.

## **2. Ratifying a New Western Territory Constitution**

Ratification is one of the most fundamental aspects of constitutional change. It is the process by which the people who are to be governed under a constitution signify that they accept the proposed rules.

The problems and possibilities that go along with amending a constitution for the most part apply also to its ratification. For example, the First Peoples' veto, if established for amendment, is also established for ratification.

The Treaty First Nations insist upon such a veto. They foresee attending a constituent assembly after their own ratification process has taken place, followed by a territory-wide plebiscite. The constitution will be a form of treaty, to which all Treaty First Nations are party, and which they will sign as equals with the central government, Ottawa and other Aboriginal First Nations.

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The Commission recommends that the ratification process for the New Western Territory constitution provide for the consent of Aboriginal First Nations.

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The Commission also received a number of suggestions for public ratification of the New Western Territory constitution by plebiscite or referendum.

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The Commission recommends that:

- \* the ratification process guarantee a public information and consultation process; and,
  - \* the constitution be ratified by New Western Territory residents in a plebiscite or referendum, subject to further development of a ratification process in Phase II.
- 

## **3. Entrenchment of the New Western Territory Constitution**

The Commission raised the issue of provincial status for the New Western Territory early in its work. Such status was seen as one way in which the New Western

Territory constitution could be protected from unilateral amendment by the federal government.

A review of the legal options showed that the prospects for creating a province out of the New Western Territory are fairly slim. Funding and the federal responsibility with respect to First Peoples were two major obstacles noted in the Commission's interim report.

On the matter of entrenching the new constitution, a review of the legal options clearly indicates that this is a matter over which the residents and governments of the New Western Territory have little direct influence or control, especially if provincial approval is required. Nevertheless, the members of the Commission believe that the status of the New Western Territory constitution, and measures which can be taken to protect it from unilateral change by Parliament, are important issues to pursue.

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The Commission recommends that territorial jurisdictions and territorial orders of government be recognized and entrenched in the Constitution of Canada, with the New Western Territory constitution becoming a schedule to the Constitution of Canada.

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#### 4. Conclusion

The Commission heard consistently that there is an urgent need for constitutional reform in the New Western Territory. They have attempted to show that reform is possible and practical. The proposals made are preliminary and are presented for further discussion.

Throughout the hearings, the Commission heard concerns about the high cost of governments. They did not have the means or the time to look into the cost implications of putting these draft recommendations into effect.

In the Commission's interim report, the government of the Northwest Territories was asked to give the Commission some comments on this issue. The Commission received no comments on this issue from the government of the Northwest Territories. The Commission again encourages the government to come forward with comments on the cost implications of these recommendations.

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The Commission strongly recommends that the fiscal implications of New Western Territory constitutional development be examined in depth in Phase II.

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The members of the Commission are conscious that their proposals represent the start of what may be the last effort to accommodate public government combined with aboriginal governments in a New Western Territory.

No resident of the present western Northwest Territories should be under any illusions about maintaining the status quo. If something similar to the district government concept cannot be made to work, public government on a territory-wide basis may be a thing of the past. Instead, there may be a set of separate and exclusive aboriginal jurisdictions, with some residual areas administered by the federal and territorial governments.

The members of the Commission are confident, however, that the next phase in the public process of constitutional development, based on the work accomplished so far, will provide the people of the New Western Territory with a workable, affordable and acceptable constitution. They are honoured to have been part of the first phase of this process.



# LIST OF INDIVIDUALS APPEARING BEFORE THE COMMISSION FOR CONSTITUTIONAL DEVELOPMENT

| Date          | Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Location    |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Nov. 4, 1991  | Mr. Irvin Norn, Chair, South Slave Tribal Council<br>Ms. Alice Horsnel, President, Metis Local #51<br>Ms. Mary Temple<br>Mr. R. McBryan<br>Ms. Georgina Rolt<br>Mr. Chuck Davidge<br>Mr. Eric Braathen                                                                                                                                                                                                                                                                                            | Hay River   |
| Nov. 5, 1991  | Mr. Jack Cooper<br>Mr. Norm Hill, Mayor<br>Mr. David Harrison<br>Students of Diamond Jenness High School                                                                                                                                                                                                                                                                                                                                                                                          |             |
| Nov. 18, 1991 | Mr. Dennis Bevington, Mayor<br>Ms. Dale Robinson, Council for Disabled Persons<br>Mr. Irvin Norn, Chair, South Slave Tribal Council<br>Mr. Clayton Burke<br>Mr. George Kurszewski<br>Ms. Vina Champagne<br>Mr. Larry Potras<br>Students of P.W. Kaiser High School                                                                                                                                                                                                                                | Fort Smith  |
| Nov. 19, 1991 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |             |
| Nov. 19, 1991 | Mr. Dusty Miller, N.W.T. Seniors' Society<br>Mr. Tim Lee, Reform Party of Canada<br>Mr. Len Jason<br>Mr. Ter Harner<br>Ms. Dianne Mahoney, Federation Franco TeNOise<br>Mr. Richard Barrett<br>Mr. Daniel Mathieu<br>Mr. Chris O'Brien<br>Mr. Ted Buracas, Ecology North                                                                                                                                                                                                                          | Yellowknife |
| Nov. 20, 1991 | Mr. Gary Bohnet, President, Metis Nation<br>Mr. Gordon Lennie<br>Ms. Beatrice Daniels<br>Ms. Pamela Bohnet<br>Mr. Sandy Holmes<br>Ms. Pat McMahon, Mayor, City of Yellowknife<br>Mr. Jim Evoy, N.W.T. Federation of Labour<br>Mr. Peter Atamenenko<br>Students of Sir John Franklin High School<br>Mr. Bob MacQuarrie<br>Ms. Winnie Fraser-Mackay, Status of Womens' Council<br>Ms. Lynn Brooks<br>Mr. Michael Stilwell<br>Ms. M. Helene Laraque<br>Mr. Joe Auge, Yellowknife Chamber of Commerce |             |
| Nov. 21, 1991 | Students of St. Patrick High School                                                                                                                                                                                                                                                                                                                                                                                                                                                               |             |



| Date          | Name                                                                                                                                                                                                                                       | Location       |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| Nov. 21, 1991 | Chief Eddy Erasmus<br>Chief Bill Erasmus<br>Mr. Antoine Mountain<br>Mr. Alexi Arrowmaker<br>Chief Jim Antoine<br>Mr. Alex Beaulieu<br>Chief Isadore Zoe<br>Mr. Jerry Antoine<br>Chief Henry Beaver<br>Ms. Betty Hardisty<br>Mr. Irvin Norm | Rae            |
| Nov. 25, 1991 | Mr. Don Patterson, Mayor<br>Ms. Margaret Donovan, Gwich'in Tribal Council<br>Mr. Willard Hagen<br>Mr. Bob Simpson<br>Ms. Eileen Gour<br>Mr. Paul Komaromi                                                                                  | Inuvik         |
| Nov. 26, 1991 | Mr. Ross MacCallum<br>Students of Samuel Hearne High School                                                                                                                                                                                |                |
|               | Mr. Roger Gruben, Chairman, Inuvialuit Regional Corp.<br>Mr. Vince Teddy<br>Ms. Sheila Nasogaluak, Sachs Harbour<br>Mr. Robert Kuptana, Holman Island<br>Mr. Fred Bennett, Paulatuk<br>Mr. Russell Newmark<br>Mr. Knut Hansen, Aklavik     | Tuktoyaktuk    |
| Nov. 27, 1991 | Mr. Charlie Snowshoe, Mayor<br>Chief James Ross<br>Mr. John Itsi<br>Ms. Wanda Vaneltzi<br>Mr. Ernest Firth<br>Mr. William Koe<br>Mr. Larry Firth                                                                                           | Fort McPherson |
| Nov. 28, 1991 | Chief Everett Kakfwi<br>Mr. George Barnaby<br>Mr. Joe Grandjambe<br>Mr. Henry Tobac<br>Mr. Jim Pierrot<br>Mr. Ron Pierrot                                                                                                                  | Ft. Good Hope  |
|               | Mr. Roger Odgaard, President, Metis Local #59<br>Mr. George Barnaby<br>Mr. Kevin Diebold, Mayor<br>Mr. Scott Prior<br>Mr. Frank Pope<br>Mr. Rick Muires                                                                                    | Norman Wells   |

| Date         | Name                                                                                                                                                                                                                                                                         | Location       |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| Dec. 2, 1991 | Chief Antoine Michel<br>Ms. Liza Enzo<br>Ms. Bernadette Lockhart<br>Ms. Alizette Abel<br>Mr. Pierre Marlow<br>Mr. John Catholique<br>Mr. Maurice Lockhart                                                                                                                    | Snowdrift      |
| Dec. 3, 1991 | Mr. Rocky Simpson<br>Mr. Chris Brodeur<br>Ms. Winnie Fraser-Mackay<br>Ms. Carolyn Lyon<br>Ms. Wendy MacDonald                                                                                                                                                                | Hay River      |
| Dec. 4, 1991 | Mr. Francis Jenkins, Mayor<br>Mr. Joachim Bonnetrouge<br>Mr. James Christie<br>Mr. Mansell Grey<br>Mr. Sam Gargan, M.L.A.<br>Mr. Jim Thom                                                                                                                                    | Ft. Providence |
| Dec. 5, 1991 | Mr. Raymond Michaud, Mayor<br>Ms. Jean Lafferty<br>Mr. Andy Norweigan<br>Chief Stanley Sanguetz<br>Ms. Rita Cazon<br>Mr. Rene Lamothe<br>Ms. Betty Hardisty<br>Mr. Nolan Swartzenruber<br>Mr. Ernest Cazon<br>Ms. Ethel Lamothe<br>Mr. Jerry Antoine<br>Ms. Bertha Norweigan | Fort Simpson   |
| Dec. 5, 1991 | Chief Eddy Erasmus<br>Mayor Dan Marion<br>Ms. Winnie Fraser-Mackay<br>Ms. Bertha Rabesca<br>Mr. Henry Zoe, M.L.A.<br>Mr. Nick Black<br>Ms. Adena Sumter-Freitag<br>Mr. John B. Zoe                                                                                           | Ft. Rae        |

| Date          | Name                                                                                                                                                                                                                                            | Location     |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Mar. 13, 1992 | Mr. Don Patterson, Mayor of Inuvik<br>Mr. Rudy Cardinal, Sub-Chief<br>Inuvik Gwich'in Council<br>Ms. Paula Van Buskirk<br>Mr. Bob Simpson<br>Mr. Peter Clarkson                                                                                 | Inuvik       |
| Mar. 24, 1992 | Chief Eugene Pascal<br>Ms. Barbara Allen<br>Mr. Roger Gruben, Chairman,<br>Inuvialuit Regional Corporation<br>Ms. Rita Furlong-Arey, President,<br>Status of Women Council<br>Ms. Mary Kendi<br>Ms. Marjorie Elanik                             | Aklavik      |
| Mar. 25, 1992 | Mr. George Cleary, President,<br>Sahtu Tribal Council<br>Mr. Doug Bruce, Administration Officer,<br>Village of Norman Wells<br>Mr. Roger Odgaard, President, Metis Local #59<br>Chief Richard Kochon, Colville Lake<br>Mr. Jonas Neyelle, Mayor | Fort Norman  |
| Mar. 26, 1992 | Chief Jerry Antoine<br>Ms. Christina Holman<br>Mr. Bill Lafferty<br>Ms. Ethel Lamonthe                                                                                                                                                          | Fort Simpson |
| Mar. 30, 1992 | Mr. Dennis Bevington, Mayor<br>Chief Henry Beaver<br>Mr. George Kurszewski<br>Ms. Vicky St. Nation<br>Madame Dube                                                                                                                               | Fort Smith   |
| Mar. 31, 1992 | Mr. Dave Gray, Town of Hay River<br>Mr. A. Fred Lamb<br>Mr. Ben Kutz<br>Mr. Alec Goodzeck<br>Ms. Abbey Crook, Soaring Eagle<br>Friendship Centre<br>Mr. George Blondin, Elder                                                                   | Hay River    |

| Date          | Name                                                                                                                                                                                                                                                                                                                        | Location        |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Mar. 31, 1992 | Ms. Carolyn Lyon, Executive Director,<br>Hay River Women's Assn.<br>Mr. Rocky Simpson<br>Chief Jerry Antoine<br>Mr. Robert Ross<br>Ms. Alice Horsnel, President, Metis Local #51<br>Mr. John Thomas<br>Mr. Eric Braathen<br>Chief Henry Beaver                                                                              | Hay River       |
| April 1, 1992 | Chief Bernadette Unka<br>Mr. Robert Sayine, Mayor<br>Ms. Violet Beaulieu<br>Mr. Don Balsillie<br>Ms. Dorothy Unka, Deninoo Community Council                                                                                                                                                                                | Fort Resolution |
| April 2, 1992 | Chief Joseph Judas<br>Mr. Henry Zoe, M.L.A. North Slave<br>Mr. Alexi Arrowmaker, Elder<br>Mr. Felix Dryneck, Elder<br>Chief Eddie Erasmus<br>Mr. Dan Marion<br>Mr. John B. Zoe<br>Chief Isadore Zoe<br>Chief Jonas Sangris<br>Chief Darrel Beaulieu<br>Mr. Joe Mantla, Elder<br>Mr. Harry Simpson, Elder                    | Snare Lake      |
| Apr. 3, 1992  | Ms. Dianne Mahoney, Franco TeNOise Fed.<br>Mr. Jim Evoy, Fed. of Labour<br>Mr. Bob MacQuarrie<br>Ms. Dale Robinson, Council for Disabled Persons<br>Mr. Charles Dent<br>Mr. Ter Hamer, President, Reform Party of Canada<br>Mr. Trevor Teed<br>Mr. Chris O'Brien<br>Mr. Sandy Holmes<br>Chief Bill Erasmus, Dene Nation     | Yellowknife     |
| Apr. 4, 1992  | Mr. Gary Bohnet, President, Metis Nation<br>Ms. Pat McMahon, Mayor<br>Mr. Dave Lovell<br>Mr. Joe Auge, Yellowknife Chamber of Commerce<br>Ms. Winnie Fraser-MacKay, Status of Women Council<br>Ms. Reanna Erasmus, Status of Women Council<br>Ms. Adde Sumter-Freitag<br>Mr. Michael Ballantyne, M.L.A.<br>Ms. Barb O'Neill |                 |





**WRITTEN SUBMISSIONS**  
**received by the**  
**COMMISSION FOR CONSTITUTIONAL DEVELOPMENT**  
**(First Round of Public Hearings)**

| Submission by                          | Community/Organization                           |
|----------------------------------------|--------------------------------------------------|
| Anonymous                              | Unauthored submission of our<br>discussion paper |
| Buracas, Ted                           | Ecology North                                    |
| Brooks, Lynn                           | Status of Women Council                          |
| Cleary, George                         | Sahtu Tribal Council                             |
| Deh Cho Regional Council               |                                                  |
| Dene Nation                            |                                                  |
| Donovan, Margaret                      | Gwich'in Tribal Council                          |
| Dupont, Tyler                          | Student, Inuvik                                  |
| Edwards, Phillip                       | Student, Inuvik                                  |
| Evoy, Jim                              | N.W.T. Federation of Labour                      |
| Firth, Larry                           | Fort McPherson                                   |
| Fort Good Hope Community Council       |                                                  |
| Fort Smith Native Band                 |                                                  |
| Gruben, Roger                          | Inuvialuit Regional Corporation                  |
| Hamer, Ter                             | Yellowknife                                      |
| Hawkins, Ron                           | Yellowknife                                      |
| Holmes, Sandy                          | Yellowknife                                      |
| Huston, Baxter and Ann                 | Fort Smith                                       |
| Itsi, John                             | President, H.T.A. Tetlit Gwich'in Band           |
| Koe, William                           | Band Council, Fort McPherson                     |
| Lee, Tim                               | Reform Party of Canada                           |
| MacQuarrie, Bob                        | Self, Yellowknife                                |
| McMahon, Pat                           | Mayor of Yellowknife                             |
| Mercredi, Joe                          |                                                  |
| Miller, Dusty                          | N.W.T. Seniors' Society                          |
| Murray, John                           | Yellowknife                                      |
| N.W.T. Council for<br>Disabled Persons |                                                  |
| O'Brien, Chris                         | Yellowknife                                      |
| Patterson, Don                         | Mayor of Inuvik                                  |
| Prior, Scott                           | Norman Wells                                     |
| Snowshoe, Charlie                      | Mayor of Fort McPherson                          |
| South Slave Tribal Council             |                                                  |
| Status of Women Council                |                                                  |
| Stilwell, Mike                         | Yellowknife                                      |
| Vaneltsi, Kim                          | Student, Fort McPherson                          |
| Vaneltsi, Wanda                        | Tetlit Gwich'in Band                             |
| Yellowknife Chamber of Commerce        |                                                  |
| Y. W. C. A.                            |                                                  |

**WRITTEN SUBMISSIONS**  
**received by the**  
**COMMISSION FOR CONSTITUTIONAL DEVELOPMENT**  
**(Second Round of Public Hearings)**

| Submission by                 | Community/Organization                      |
|-------------------------------|---------------------------------------------|
| Ballantyne, Mike              | Yellowknife                                 |
| Beaver, Henry                 | Chief, Fort Smith Band                      |
| Bevington, Dennis             | Mayor, Town of Fort Smith                   |
| Bohnet, Gary                  | President, Metis Nation                     |
| Cardinal, Rudy                | Sub-Chief, Inuvik Band                      |
| Community of Inuvik           |                                             |
| Crook, Abbey                  | Soaring Eagle Friendship Centre, Fort Smith |
| Dent, Charles                 | Yellowknife                                 |
| Diebold, Kevin                | Mayor, Norman Wells                         |
| Duesterhus, Adolf             | Yellowknife                                 |
| Erasmus, Bill                 | Dene Nation                                 |
| Evoy, Jim                     | N.W.T. Federation of Labour                 |
| Fraser-MacKay, Winnie         | Status of Women Council                     |
| Gargan, Sam                   | M.L.A.                                      |
| Gruben, Roger                 | Inuvialuit Regional Corporation             |
| Hagen, Willard                | Gwich'in Tribal Council                     |
| Hamer, Ter                    | Reform Party of Canada                      |
| Holmes, Sandy                 | Yellowknife                                 |
| Jumbo, Alison                 | Deh Cho Tribal Council                      |
| Kutz, Ben/Carolyn Lyon        | Hay River                                   |
| La Federation Franco-TenOise  |                                             |
| Lamb, Fred                    | Hay River                                   |
| Latour, Vicky/Evelyn Tregidge | Hay River                                   |
| MacQuarrie, Bob               | Yellowknife                                 |
| Marie-Jewell, Jeannie         | M.L.A. Thebacha                             |
| McMahon, Pat                  | Mayor, City of Yellowknife                  |
| Metis Local #53               |                                             |
| Michaud, Raymond              | Village of Fort Simpson                     |
| Miller, Dusty                 | N.W.T. Seniors' Society                     |
| Murray, John                  | Yellowknife                                 |
| N.W.T. Chamber of Commerce    |                                             |
| O'Brien, Chris                | Yellowknife                                 |
| Patterson, Don                | Mayor, Town of Inuvik                       |
| Pascal, Eugene                | Chief, Aklavik Band                         |
| Robinson, Dale                | N.W.T. Council for Disabled Persons         |
| Ross, Robert                  | Hay River                                   |
| Sahtu Regional Council        |                                             |
| Sayine, Robert                | Mayor of Fort Resolution                    |
| Scarborough, Charlie          | Town of Hay River                           |
| Sumter-Freitag, Adena         | Yellowknife                                 |
| Teed, Trevor                  | Yellowknife                                 |
| Unka, Bernadette              | Fort Resolution                             |
| Unka, Dorothy                 | South Slave Regional Council                |
| Zoe, Henry                    | Ti Cho Regional Council                     |

## CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

### GUARANTEE OF RIGHTS AND FREEDOMS

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

### FUNDAMENTAL FREEDOMS

2. Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association.

### DEMOCRATIC RIGHTS

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein. 4.(1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its member. (2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be. 5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

### MOBILITY RIGHTS

- 6.(1) Every citizen of Canada has the right to enter, remain in and leave Canada. (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right (a) to move to and take up residence in any province; and (b) to pursue the gaining of a livelihood in any province. (3) The rights specified in subsection (2) are subject to (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services. (4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

## LEGAL RIGHTS

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. 8. Everyone has the right to be secure against unreasonable search or seizure. 9. Everyone has the right not to be arbitrarily detained or imprisoned. 10. Everyone has the right on arrest or detention (a) to be informed promptly of the reasons therefore; (b) to retain and instruct counsel without delay and to be informed of that right; and (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful. 11. Any person charged with an offence has the right (a) to be informed without reasonable delay of the specific offence; (b) to be tried within a reasonable time; (c) not to be compelled to be a witness in proceedings against that person in respect of offence; (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; (e) not to be denied reasonable bail without just cause; (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of a trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment; (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations; (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment. 12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment. 13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence. 14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

## EQUALITY RIGHTS

- 15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

## OFFICIAL LANGUAGES OF CANADA

- 16.(1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada. (2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick. (3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French. 17.(1) Everyone has the right to use English or French in any debates and other proceedings of Parliament. (2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick. 18.(1) The statutes, records

and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative. (2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative. 19.(1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament; (2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick. 20.(1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where (a) there is a significant demand for communications with and services from that office in such language; or (b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French. (2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French. 21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada. 22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

## OFFICIAL LANGUAGES OF CANADA

- 23.(1) Citizens of Canada (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province. (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language. (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instructions; and (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

## ENFORCEMENT

- 24.(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.



## GENERAL

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired. 26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada. 27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. 28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons. 29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools. 30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be. 31. Nothing in this Charter extends the legislative powers of any body or authority.

## APPLICATION OF CHARTER

- 32.(1) This Charter applies (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and (b) to the legislature and government of each province in respect to all matters within the authority of the legislature of each province. (2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force. 33.(1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 25 of this Charter. (2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operations as it would have but for the provision of this Charter referred to in the declaration. (3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration. (4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

## CITATION

34. This Part may be cited as the *Canadian Charter of Rights and Freedoms*.

## TERMS OF REFERENCE

### COMMISSION FOR CONSTITUTIONAL DEVELOPMENT

#### PREAMBLE

People of the Northwest Territories have a strong interest in the development of their institutions of self-government and in securing their democratic rights in a public government. They have stressed the importance of collective aboriginal rights and self-government jurisdictions, individual rights, and community/regional government. They also want a redistribution of power between the federal, territorial and community level.

Given these circumstances, it is imperative for the Government of the Northwest Territories and other aboriginal groups to be prepared to describe in detail to their constituencies the possible shape of governmental structures in the Northwest Territories.

Recent meetings between representatives of the Government of the Northwest Territories, the Inuvialuit Regional Corporation, the Dene Nation, the Metis Association of the Northwest Territories, the Sahtu Dene/Metis Council and the Gwich'in Tribal Council to discuss the constitutional development process in the Northwest Territories has resulted in an agreement to create an independent commission. The commission will develop a comprehensive constitutional proposal for those regions of the Northwest Territories remaining after the creation of Nunavut.

#### DEFINITIONS

Commission for Constitutional Development:

A commission with the following terms of reference as prepared by the Committee of Political Leaders and funded by the Government of the Northwest Territories.

Committee of Political Leaders:

An informal group of political leaders including representatives from the Government of the Northwest Territories and from the major aboriginal organizations in the western Northwest Territories.

## **COMMISSION FOR CONSTITUTIONAL DEVELOPMENT**

### **MEMBERSHIP OF THE COMMISSION**

The Commission is comprised of six members. Four members and the Chairperson of the Commission are appointed by the Committee of Political Leaders and one Member to be appointed by the Western Members of the Legislative Assembly of the Northwest Territories.

### **MANDATE AND OBJECTIVE**

The ultimate objective of the Commission is to develop a comprehensive constitutional proposal for those regions of the Northwest Territories remaining after the creation of Nunavut for consideration by way of a plebiscite.

The Commission shall engage in a variety of activities to reach this objective including:

- \* researching a wide variety of existing documents relevant to the topic,
- \* public consultation including community visits and the convening of one or more constituent constitutional conferences if deemed necessary by the Commission,
- \* receiving formal submissions from aboriginal organizations and from other interested parties,
- \* hiring staff and consultants as required,
- \* consulting with but maintaining an independent status from the Committee of Political Leaders, and
- \* reviewing its draft reports with the Committee of political leaders,
- \* submitting its final proposal to the public by way of a plebiscite.

The project will be divided into two phases:

Phase I will run from July 1991 to early 1992 and its primary purpose will be to provide the public with clear, basic information about constitutional development and the potential options available for the public to consider in preparation for the boundary plebiscite in 1992.

Phase II will entail the completion of a comprehensive constitutional proposal for the public to consider and ratify.

## COMMISSION FOR CONSTITUTIONAL DEVELOPMENT

### PHASE I

Phase I will include the following elements:

1. The preparation of a budget and workplan, for submission to the Executive Council, for the fiscal year 1991-92 which includes all of Phase I and the very early stages of Phase II.
2. Establishment of a Commission including the hiring of staff, setting up offices and setting general fiscal and other operating policies.
3. Research and review the principles and proposals set forth over the years for constitutional development by all groups in the Northwest Territories with an interest in the topic of political development in the North. The Canadian Constitution, the Iqaluit Agreement, and documents produced by the Western Constitutional Forum, aboriginal, regional and community organizations will form the central focus of the review.
4. Based upon the above review, prepare a discussion paper and other instruments for public communication, including a possible set of principles to guide the development of a Constitution.
5. Ensure that the appropriate, independent parties with a major stake in the project have obtained funding consistent with predetermined criteria to enable them to prepare indepth positions on constitutional development. The Commission will set the criteria for funding and set the appropriate levels of funding for each interested party.
6. Hold public meetings/workshops in as many communities as is practicable in the western Northwest Territories as well as utilizing other available avenues to communicate with and engage the public in the discussion about constitutional development.
7. The completion of a preliminary report by early 1992. Without limiting what the Commission might choose to include, the report should summarize the responses the Commission obtained from its community meetings and the starting principles and constitutional options should be reviewed with those responses in mind.

### STRUCTURE OF THE COMMISSION

The Commission shall be incorporated under the Societies Act. It shall receive its budget from the Government of the Northwest Territories by way of a standard contribution agreement. The Commission will hire its own staff, consultants, etc. and be responsible for its own financial policies, records and audits.

## **COMMISSION FOR CONSTITUTIONAL DEVELOPMENT**

### **RELATIONSHIP WITH OTHER BODIES**

Although independent, the Commission will be affected by other groups and it is therefore useful to clarify its relationship with these groups:

#### ***Legislative Assembly of the Northwest Territories***

It will be necessary for the Legislative Assembly to pass a motion endorsing the Commission and directing the Government to assist in its establishment. It will also be necessary for the Assembly to pass a motion approving in principle the early 1992 date for a boundary plebiscite.

#### ***Government of the Northwest Territories***

The primary role of the Government of the Northwest Territories will be to identify funds for the Commission for 1991/92 and for the plebiscite, and to establish budgets for both during the current fiscal year.

#### ***Individual Aboriginal Organizations***

Aboriginal organizations will participate directly in the constitutional development process as members of the Committee of Leaders and as groups receiving funds to prepare indepth positions on constitutional development.

#### ***Non-Aboriginal Community***

While having a right to participate fully in the process, the non-aboriginal community does not have an organization created specifically to represent their interests. The caucus of western non-aboriginal Members' of the Legislative Assembly continue to be the most appropriate vehicle to represent generally the views and interests of non-aboriginal residents. In addition, non-aboriginal residents will be fully involved in the community meetings and in the constitutional conferences, and certain groups may be able to access some funds for independent research.

#### ***Communities and Regions***

The communities and the regions will be full and equal participants in constitutional development process and will be assured of at least two visits by the Commission for public meetings during its lifetime. Regions in particular may be eligible for some funds for research.



MEMBERS OF THE COMMISSION

**J. W. Bourque (Chairperson)** - Mr. Bourque was formerly Deputy Minister of the Government of the Northwest Territories, Department of Renewable Resources. He is a former President of the Metis Association of the Northwest Territories.

**Bertha Allen** - Mrs. Allen was the founding President of the Native Womens' Association of the Northwest Territories and the founding President of the Advisory Council on the Status of Women of the Northwest Territories. She was nominated by the Western Members of the Legislative Assembly.

**Les L. Carpenter** - Mr. Carpenter is a Sachs Harbour businessman and the former Mayor of that community. For many years he was an announcer with CBC Radio. He was also the first Chairman and President of the Inuvialuit Regional Corporation. Mr. Carpenter now serves as Chairman of Umayot and as Canadian Vice-President of the Inuit Circumpolar Council. He was nominated to the Commission by the Inuvialuit Regional Corporation.

**Richard I. Hardy** - Mr. Hardy is a Yellowknife lawyer. He is a former President of the Metis Association of the Northwest Territories and was one of the originators of a Metis land claim. Mr. Hardy was nominated by the Metis Nation.

**Francois Paulette** - Mr. Paulette is a former Chief of the Fitz/Smith Dene Band and a past Regional Vice-Chief of the Dene Nation. He was one of the originators of the 1972/73 caveat of Judge Morrow's N.W.T. Supreme Court Ruling (The Paulette Case). He was nominated to the Commission by the Dene Nation.

**George Braden** - Mr. Braden is a former Member of the Legislative Assembly and Government Leader of the Northwest Territories. He was the Pavilion Commissioner for the Northwest Territories at Expo '86. He has also served as Government of the Northwest Territories Deputy Minister of Intergovernmental Affairs. Mr. Braden was nominated by the Government of the N.W.T.

